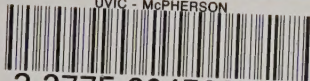



UVIC - McPHERSON



3 2775 90459350 5



Digitized by the Internet Archive
in 2021 with funding from
Kahle/Austin Foundation

THE REGENERATORS



RUDOLPH SPRECKELS

The chief of the regenerators and financial backer of the
Graft Prosecution.

THE REGENERATORS

*A Study of the Graft Prosecution
of San Francisco*

BY
THEODORE BONNET

ILLUSTRATED

San Francisco
PACIFIC PRINTING COMPANY
1911

UNIVERSITY OF VICTORIA

Copyright, 1911, by
THEODORE BONNET.

PREFACE

To the Average Citizen:

Dear Sir: Permit me to offer you this little book if for no other purpose than to employ you as a pretext for the writing of a foreword. Though I do not agree with the writers of the long ago that a book rightly comprehended is but a peg on which to hang a preface redolent of the author's charming personality and palpitant with his life-blood, I feel that not always should a man hazard himself between book covers without an explanation.

The events which most deeply occupy the minds of one generation are often those of which the next knows least. This thought occurred to me some years ago, when as a result of laborious research I made myself more or less familiar with the career of the Vigilance Committee of 1856. For many years it was supposed that the Vigilantes of San Francisco were public benefactors, whose motives were untainted, whose performances entitled them to the veneration of posterity. Latterly it has been found that this judgment might be somewhat modified without incurring the suspicion of injustice. Mindful of the tendency of events to become so clouded as to make it difficult to trace the connection between causes and effects, I resolved to make this book that I might preserve from immediate de-

cay some curious material, which, though it may suggest no patterns to imitate, at all events is not without examples to deter. The book is a study of the Graft Prosecution of San Francisco, a sort of moral autopsy on a corpse that has just given its last kick.

I know that usually, dear average citizen, you buy a book to be amused. I know that to you a book means something to while away a tedious hour, and so I have tried to adapt the book to your taste and temperament; that is, I have moralized as little as possible, and I have strung my essays together on a thread of general interest, arranging the most vivid facts and diverting incidents in what I conceive to be a coherent picture. But I have tried also not to lose sight of my purpose, which is to induce you to think. You flatter yourself that your mind is keen, practical, versatile, in full possession of life, always steeped in affairs, always cognizant of what is going on in the world; but as a matter of fact you are under a spell. Your thoughts are formed for you without your knowledge; you meditate along lines laid down for you; even your own judgment is a matter of intellectual process foreign to yourself. In short you are the pliant tool of the press. It is your boast that you don't believe what you read in the newspapers. The truth is you don't believe anything else. The tyrant newspaper has you in thrall. Pretending to reflect your opinion in its editorial

columns, the opinion it reflects in those columns is the opinion which you formed from reading disguised editorial matter fashioned for your deception and injected into you through the medium of the news columns. As a result of the imposture practiced on you from day to day you have become incredulous of nothing but the truth. You are like the toper who has so keen a taste for raw spirits that good whisky nauseates him. Now herein a thesis is employed as a whetting-block to sharpen up your wits, and you are expected to yield them to one who would make you sceptical of your smug infallibility. I hope to have your mind share the processes on which I have been engaged, and if possible I would have you accept my point of view, that you may see things as I have seen them, on a somewhat broader base of knowledge than you have had hitherto. I would persuade you of the possibility of there being two sides to a story. This peculiarity of stories is proverbial, but that anything you have read in the newspapers and accepted as though it were clothed with the sanctity of holy writ, could be presented from any viewpoint other than the one from which you observed it, is an idea that doubtless will strike you as preposterous. It is of the rationality of this idea that I would convince you; and hence this series of essays, through which runs a thread of narrative of an historical nature, dealing with events which are matters of per-

sonal recollection, and with facts that have been authenticated. Presumably you have read of the prosecution of grafters in San Francisco. Presumably you know of the crimes that were imputed to the higher-ups in the course of the prosecution. It is my purpose to tell the other side of the story, to conduct you through an inquiry respecting the conduct of the men who consecrated their talents to the task of regenerating a city. Frankly I seek to direct your judgment of men and events. So not between these covers is to be found the pose of the disinterested historian. "To be entirely just in our estimate of other ages," says Froude, "is not only difficult—it is impossible." It is impossible because one's sympathies are swayed by one's temperament, directed by one's instinctive prepossessions. If, then, one cannot write impartially of other ages, how absurd to affect impartiality in writing of one's own age; especially in writing of events that tried one's soul, of men that provoked one's anger and resentment. Of such events, of such men, have I written in these imperfect essays. And though time has assuaged my feelings, it has not affected my beliefs, nor has it weakened my convictions.

As I look back on the turbulent days that are gone I have nothing but repentance for the personal bias, that most irrational of all human conceits, to which I yielded on seeing what I regarded as private animosity masquerading as

public duty. How greatly does partisanship conduce to self-deception! The partisan flatters himself that he hates a man on principle when it is only because the man is on the other side. By the experience of the past I have been chastened and disciplined, and while I will not pretend that I breathe the serene air of the temple of wisdom far above the rage of the warring elements of human nature, I trust that I have pursued my study with feelings free from resentment, though always conscious of the rights which criticism reserves to itself. I have written, I trust, with no lack of reverence for the truth. But so strange is truth that much of this book will read to you almost as an experiment upon your credulity. Knowing this I hasten to assure you that what is incredible may be not the less true; that, indeed, what is most incredible is most true.

THEODORE BONNER.

September 11, 1911.

CONTENTS

	Page
Prologue	1
Chapter I. Birth of the Regenerators.....	14
How the Prosecution was Organized, and the Gradual Unfolding of Its Plans.	
Chapter II. Men and Motives.....	32
A Study of the Leading Regenerators and of Their Attitude Toward the Chief Grafters and Some of the Higher-ups.	
Chapter III. The Car Strikes.....	44
Because Union Men Demand and Are Denied Lower Wages a City is Made to Suffer from Lawlessness and Business Paralysis.	
Chapter IV. Bizarre Justice.....	65
The Manipulation of Juries, Grand and Petty, a Plague of Spies and the Employment of General Warrants.	
Chapter V. Grafters and Prosecutors.....	78
When Facts Don't Square with Theory Then Comes Progressive Testimony Under the Immunity Lash.	
Chapter VI. Ruef Pleads Guilty and Why.....	101
Experience of the Former Boss in the Hands of the Regenerators: He Bargains for Immunity, but Refuses to Give the Right Kind of Testimony and is Forsworn.	
Chapter VII. The Schmitz Case.....	136
A Trial in Which the Law was Adapted to the Purposes of the Regenerators Without Regard to Elemental Principles or the Constitutional Rights of the Defendant.	
Chapter VIII. The Dynamite Explosion.....	163
A Miracle by Which the Precious Life of a Great Grafters was Spared, and Which Enabled the Regenerators to Inflamm Public Opinion.	

	Page
Chapter IX. The Shooting of Heney.....	184
An Infuriated Ex-Convict Revenges Himself on the Virulent Prosecutor and Commits Suicide Just as Detective Burns is About to Pursue a Clue.	
Chapter X. The Biggy Mystery.....	208
Hounded by the Regenerators the Chief of Police Comes to a Tragic End.	
Chapter XI. The Conviction of Ruef.....	219
A Jury After Listening to Vague Threats from the Prosecuting Attorney Renders a Verdict of Guilty.	
Chapter XII. The Calhoun Trial.....	229
Followed by the Crushing Defeat of Heney at the Polls and a Scattering of the Forces of Righteousness.	

LIST OF ILLUSTRATIONS

	Page
Fragments of the Cornelius Letters.....	57
The Car Strike.....	65
Judge Frank H. Dunne.....	147
After the Miracle.....	169
Ruef Going To and From Court.....	225
Judge William P. Lawlor.....	235

THE REGENERATORS

PROLOGUE

Convulsed by earthquake, devastated by fire, San Francisco next experienced what some persons have pronounced a greater affliction—the Graft Prosecution. The scars of earthquake and fire are no longer visible, the wounds inflicted by the passions of man are still raw. San Francisco, nay, all California, is today expiating a protracted moral debauch. Strange history is in the making in California.

All history we have been told is philosophy teaching by example. This is true of current, as well as of ancient, history; of what is happening in California today as well as of what happened in England in the time of Cromwell. The size of the stage upon which the great dramas of history were enacted is a circumstance having not the slightest effect on the value of the material supplied for philosophic deduction. As much is to be learned from the history of Florence or of the Dutch Republic as from that of the great Roman Empire, for, after all, the study of mankind may be profitably pur-

sued wherever "the feeble worm of the earth" is to be found indulging in his follies.

Now on the whole there is much varied and valuable food for reflection in the story of the Graft Prosecution from the standpoint at which it is here to be presented. And the study of it may be pursued with advantage at this particular time, since we are now entering upon a new era of political development; since we are being advised and persuaded that the people are so enlightened and so just that they are no longer in need of the institutional checks and safeguards designed and contrived by the Founders. It will be seen that notwithstanding the spread of "sweetness and light," the susceptibilities of human nature are the same today as in the Stuart period of English government, which is at once that of the greatest glory and greatest shame in British annals; a period in which judicial records were stained by the foulest crimes in modern history. There are no pages in history that fill us with so much disgust, so much horror, as those that present the narratives of crimes committed in the name of justice in times of popular panic; as, for example, the crimes by which Titus Oates achieved immortal infamy, and the crimes that made the Calas tragedy memorable in the annals of France. Characterized by the same spirit of inhumanity, conclusive of the same indifference to the principles of justice, were the strange enormities that marked

the progress of pseudo-regeneration in San Francisco. It will be found, perhaps, that the lesson which the Graft Prosecution affords is one of personal interest to every individual in the United States. For the political institutions of California are much the same as the political institutions of every other State in the Union; nor are the people of California vastly different in temperament from the people of other States.

If the people of the metropolis of California by reason of all that has been written of them of late have come to be regarded as peculiarly incorrigible, singularly insensible to their own interests, this conception on examination may be found to be somewhat inaccurate. While there was much to reprehend in the conduct of the people of San Francisco during the turbulent period following the earthquake and fire, it was at all events characteristic of human nature. An excited populace, as we have seen, in all ages and countries, displays the same aptitude for harsh and hazardous expedients, the same blindness to its own real interests, the same liability to be duped by Pharisaism masquerading as civic righteousness. If the people of San Francisco are deserving of censure it is not for the coldness which they developed toward their regenerators but rather for the duration of their enthusiasm. And considering all the circumstances it would be a very harsh judge who would hold them blameworthy. All that the people of San Francisco were able

to perceive was the obvious, and by that their enthusiasm was justified. The obvious is all that any populace was ever able to perceive. The obvious in San Francisco was the wrongdoing of certain officials and the rightdoing of the men who volunteered to punish them. As is invariably the case the multitude were absorbed in the project in hand and insensible of the possibility of evil consequences. They could see the proximate, but what lay dimly in the distance was beyond their range of vision. It would have been remarkable had it been otherwise. Many men above the average in intelligence were no better off than the multitude. Some very bright magazine writers visited San Francisco during the Graft Prosecution, journalists engaged in supplying people with emotions, eager for the right kind of material; but they were unable to stick their claws into reality. Callous to the sublime interest of the story that lay ready to hand, its perplexities they never sifted, but accepted the reformers at the reformers' own appraisal, and wrote about them from but one standpoint. None of them ever thought of viewing the struggle from the other angle; yet from that angle could have been seen what was really interesting; nay, what was really romantic. For in truth what is instructive is not all that may be found in this story of medieval passion, possessing as it does all the interest of a fictitious narrative, and exhibiting so many

strange vicissitudes that it may indeed pass as a romance. The crimes of the grafters and what is obvious with reference to the prosecution of the grafters afford nothing but material for the most commonplace melodrama. The ineptitudes and futile machinations of the men who prosecuted the grafters, and their doings generally, are such as to seem wholly divorced from reality and therefore the story of them, the portraiture of the strange, the odd, the incredible has something of the flavor of romance.

* * * * *

Much like the experience of France after the first revolution is that which California is now having. For many years after her rivers of blood had ceased to flow nothing happened in France that was not directly a consequence of her extraordinary political upheaval. Friendships, hatreds, industrial combinations, the shifts and expedients of politicians, experiments and innovations—all derived their inspiration from one capital fact which had completely changed the condition of life and given new impulses to every class of society. So it is today in California, where the people of the metropolis in a moment of frantic zeal for reform wandered from the middle course of feasibility and common sense and assisted in the perversion of the institutions of government. The whirligig of time is bringing in its revenges in California.

Lasting hatreds have survived the abortive work of pseudo-regeneration, giving color and tone to social affairs, industrial transactions and political bargainings. Feeling on both sides is as embittered as were the feelings of the people of Florence in the days of the Guelphs and the Ghibelines. This feud had its origin in the early days of the reform crusade when the reformers, headstrong and haughty, assumed that everybody who disliked their methods was in sympathy with dishonesty. They were intolerant of all criticism. To dissent from their views was to merit the blackest opprobrium. They swaggered and fumed, and called names, and behaved very much as though they were sighing for the days of the Inquisition. This bullying was a matter of policy. For notwithstanding their extraordinary political power, spite of their consciousness of the justness of their cause, they seemed to feel the need of the unwavering approval of public sentiment. With all the machinery of government in their hands they were not satisfied. The weapon of public opinion they wished to wield also. So the slightest adverse criticism of their methods they bitterly resented. They insisted that everybody who favored the regular mode of procedure in criminal cases must be regarded as an enemy of civic virtue. They had branding irons for every critic who had the audacity to assert the right of free speech, which, to say the least, ought to have been considered

odd, as the man who believes his conduct is right is not intolerant of discussion; he is confident that the more it is discussed the more true it will be found to be. But this was not the philosophy of the regenerators. To silence criticism they organized a body which they called the League of Justice, and intimated that summary punishment might be inflicted on every unfriendly critic. Meetings were held by this league at which hired lawyers and clergymen of the type that cultivates publicity uttered ominous warnings which served to imply that lynch law might be deemed essential to the welfare of the city. Also there was organized the Heney Woman's League composed of venerable dames whose daily appearance in court was intended to impress and awe the juries, and whose manner reminded observers of the knitters of the French Revolution.

In spite of these agencies to stifle criticism, in time it became apparent that the community was losing confidence in its patriots, who at length hit upon a masterpiece of ingenuity for the stemming of the tide: they decided to have themselves investigated and vindicated. This was like introducing a bit of comic relief to leaven the soberness of the tragic drama, but nobody laughed. For there was a reign of terror in San Francisco, and in those parlous times a joke was a serious matter. The opponents of the Graft Prosecution perceiving that the regenerators were skilled in the art of inventing jokes that were loaded, deemed it

advisable to resist appeals to their risibles. If the patriots themselves laughed it was only in their own exclusive society after the cautious manner of the ancient augurs. So when Mayor Taylor, one of the political products of the prosecution, announced one day that he had appointed a committee of seven to investigate his discoverers there was no perceptible increase in the gaiety of the community. Not a murmur of derision greeted the members of his whitewash committee, though all but two were known to be warm adherents of the Graft Prosecution. The chairman was William Denman, a young lawyer, whose father had been a political protegee of one of the millionaires behind the prosecution. Of the six men associated with him on the committee, four were ardent partisans of the prosecution. Not the least disinterested of them was William Kent, a millionaire who had contributed generously to the large fund formed to defray the expense of civic redemption, and who has since been elected to Congress, not by virtue of the record he made as a regenerator but rather by the potency of the bank account that was in evidence during his campaign. Mr. Kent was a member of the League of Justice at the time of his appointment to the whitewash committee. Also of this league was Father D. O. Crowley, a Catholic priest, appointed to the committee, presumably to impart a tone of impartiality. Father Crowley was on terms of social

intimacy with members of the reform cabal. He was not less desirous of the vindication of the regenerators than was his associate Mr. W. J. French, editor of an official organ of organized labor. In time these men produced a coat of whitewash, and nobody asked why it was that the regenerators, if they were conscious of their purity and eager for investigation, had not invited examination at the hands of disinterested citizens.

Meanwhile factional strife raged with great fury. The issue between the regenerators and their critics vibrated in every heart and burned on every tongue. Partisanship was universal. As time ran on and more apparent it became that the means employed were considerably less unimpeachable than the end professed, the town came to be divided by a great gulf of passion and prejudice. And still the slightest criticism brought out flaming denunciation. The leading and most virulent of the pro-prosecution organs argued that the weekly papers should be suppressed. Members of the League of Justice visited the editors of these papers to warn and terrorize them in the hope of putting an end to the freedom of discussion. By the pro-prosecution organs gall and spleen were poured on the heads even of private citizens, whose only offense was that of dissenting from views which the cabal had pronounced orthodox. Spleen was everywhere in evidence. Not since the days of

the fires of Smithfield did bigotry throw human nature into stronger light and shade. The feud spread over the whole State, and even now it requires but a zephyr of opinion to fan the smoldering fires into livid flame. In the metropolis, the temperament of which is like the climate, cloudless and serene, the masses have put the past where it belongs. They are preoccupied with preparations for the great fair in 1915 at which the opening of the Panama Canal is to be celebrated, but in certain quarters at brief intervals there is a recrudescence, and the old sore runs again much to the annoyance of amiable citizens whose expostulations are in vain.

If nothing but this feud survived the Graft Prosecution there would be much to deplore, but there is something worse. As a consequence of the extraordinary drama that was played in the metropolis, demoralization pervades the politics of the whole State, and what was once a sane, sober and conservative commonwealth is now conspicuous for its hysteria, its new fangled ideals, its populist tendencies, and its passion for all the catholicons prescribed by the Cleons of the hour. California is reputed to be suffering from an acute attack of what has come to be known as Progressiveness. The truth is, the aftermath of the Graft Prosecution is what the State is experiencing. What a distinguished Progressive Senator of the United States aptly described as "reform run mad" in

California, is the result of the furious vindictiveness of the men who were thwarted in their efforts to reform San Francisco by convulsion. These men have most successfully played upon the emotions and credulity of the people of the whole State. And to this day the regenerators have many defenders in California, it being against human nature for men to surrender their impassioned convictions, to admit that what they once approved with fury in the midst of superheated disputation was inconsistent with principles of decency and honesty. Men who will admit there was much they did not approve will be careful to add that as the Graft Prosecution was conducted for a righteous purpose it should have had the sympathy of all good men and that good men should palliate what evil was done. These men, persuaded that the failure of the Graft Prosecution was due to widespread corruption in politics, supported the political machine of the San Francisco regenerators in the last State campaign, and enabled them to drive the veteran practical politicians out of office. What improvement the new machine is likely to make is a question not to be discussed in these essays. All that is here intended to be shown is that the Graft Prosecution was a failure because it deserved to be, and that we may justly attribute to its leading spirits all the current vagaries of California politics.

California is today ruled by the cabal that con-

ducted the Graft Prosecution. The man who is now Governor of the State, Hiram Johnson, was one of the hired attorneys of the cabal. One of the measures which he put through a servile legislature embodies an amendment to the Constitution providing for the application of the recall to the judiciary, the purpose of which is to punish all judges who were not susceptible of intimidation at the hands of the prosecution cabal. To understand how this man, who, but a year ago was a criminal lawyer of that familiar type that haunts the criminal courts of all large cities, won the confidence of the people of California and came to exercise over them with their glad acquiescence a more despotic power than even President Roosevelt asserted in Washington, one must know something of the history of the Graft Prosecution. To appreciate the policy of his Administration, which savors of nothing so much as a consuming passion for revenge, one must know something of the performances and instincts of the men who spent three years trying to regenerate San Francisco.

But let it not be supposed that the history of the Graft Prosecution is exclusively of political interest. It will be found interesting and instructive under a three-fold aspect. It has a scientific interest, a moral or psychological interest, and a biographical or dramatic interest. It has a scientific interest inasmuch as it reveals the perversions to which the

machinery of our republican government is liable; a moral or psychological interest, inasmuch as it affords glimpses of the characters and curious tendencies of men when imbued with great zeal and convinced that their conception of the greater good is not to be challenged, their method of advancing it not to be disputed; a dramatic interest, inasmuch as it reveals human character and abounds in incidents and situations that have a poignant effect on the emotions.

I

BIRTH OF THE REGENERATORS

How the Prosecution Was Organized and the Gradual Unfolding of Its Plans

At the time of the San Francisco catastrophe the municipal government was in the hands of a notoriously corrupt set of officials. The mayor was Eugene Schmitz, president of the musicians' union, beloved of organized labor, which was then, as it is now, strongly intrenched in San Francisco. All the subordinate public officials were his puppets, and he in all his official acts was subject to the guidance and dictation of Abraham Ruef, a lawyer who began his political career as an anti-machine reformer, and whose influence as a boss was the source of his pecuniary success in his profession. Long before the fire it was a matter of common knowledge in San Francisco that the public service was corrupt. Mayor Schmitz had been long under suspicion. He was known to be obedient to Abraham Ruef. Yet he was elected mayor three times in succession. It is remarkable how much a community will bear in patience even when its vital interests are involved. The people of San Francisco knew they were governed by corrupt men.

and they were complaisant. The feeling was widespread that the condition of affairs was intolerable. But it was tolerated. Everybody felt that something ought to be done, and as usual what was everybody's business was nobody's business. After the fire public indignation which had been simmering for months suddenly boiled over at the discovery that apparently with the connivance of the police thieves were looting the ruins of the stricken city. At this propitious moment was published the news that several prominent citizens had banded themselves together to undertake the work of civic regeneration. They were hailed as redeemers. Thus the Graft Prosecution at its inception was a most popular enterprise.

Months passed by, and nothing was accomplished. The people were becoming apathetic and hopeless. At length a man who had been on intimate terms with the Administration, and who had suffered rebuke and rebuff at Ruef's hands, secretly volunteered assistance and furnished information which enabled Fremont Older, editor of the Bulletin, to compel the co-operation of a confidential agent of the grafters. This man was a fugitive from justice from one of the middle western States. He was living in San Francisco under an assumed name. Threatened with exposure, he agreed to assist William J. Burns, chief detective of the prosecution bureau, and as a result a trap was baited with a bribe,

and a corrupt supervisor was caught. Promised immunity, he made confession of all his crimes and implicated his accomplices. Then the people, inflamed with rage, were clamorous for speedy justice. Great was their enthusiasm for their public spirited citizens. Rudolph Spreckels, William J. Burns and Francis J. Heney, constituting the head and front of the reform movement, were the heroes of the hour. The whole city was at their feet. Whatever it might have pleased them to propose at that time, howsoever extravagant, the whole community would have approved and no questions would have been asked.

The Graft Prosecution was unique in this,—as a private cabal it exercised the sovereign power of a municipality. The prerogative of this cabal was like unto that of the Venetian Council of Ten, and as in Venice in the days of the infamous council, the history of San Francisco in the days of the Graft Prosecution was marked by many dramatic and some tragic episodes. The atmosphere was somewhat medieval. For anybody possessed of imagination there was romance in abundance in the sensational developments that followed in quick succession. And now in reviewing the strange vicissitudes of that tempestuous period one may well ask whether it might not have been far better for the people, not only of San Francisco but of all California, if their regenerators had followed the example

of the Vigilantes of '56. For the Vigilantes inflicted no injury on the government; they made no changes in its machinery, they established no vicious precedents, they sinned not against the administration of justice. The Vigilantes were frankly lawless. They ignored the law, but they did not debauch it. They merely defied the constituted authorities. It was unnecessary for the regenerators to follow their example. The regenerators controlled the constituted authorities. It was their misfortune to be too powerful. Power, as some one has said, is like wine—it intoxicates, and it discovers true character. It either exaggerates dignity or magnifies meanness. None but a saint can take it and preserve the purity of his soul. This attribute of the gods vouchsafed the regenerators, played havoc with their scruples. And how, it may be asked, did such things happen in an American city that boasts a free, independent and vigilant press? The answer is that the press made possible all that happened. De Tocqueville erred when he conceived that a free press in America could never do any harm, since there would always be so many newspapers that all sides of every question would receive free discussion. In San Francisco the newspapers, how remarkable! agreed to agree. And what is stranger still, for a time they actually did agree. The men who organized to prosecute grafters, before planting their batteries, held a council at which they took the editors of San

Francisco into their confidence. Mr. Rudolph Spreckels, chief financial backer of the enterprise, informed the representatives of the Fourth Estate that as a public spirited citizen he was prepared to spend a large sum of money to purge the city of its corruption, but realized that the consummation devoutly wished by all good citizens was impossible without the assistance of the press. He pointed out the necessity of getting control of the district attorney's office, the district attorney, William Langdon, being a novice at the law and hardly competent to handle so big a project. Besides he was a representative of the party in power. Mr. Spreckels deemed it necessary to have Francis J. Heney appointed a deputy of the district attorney with full power to act. He also deemed it necessary to get the right kind of grand jury, one that would be very eager to put the rascals into jail.

The editors applauded the Spreckels' spirit, approved the Spreckels' plans and gave earnest assurance of their support. Then was opened the campaign for civic decency. District Attorney Langdon was at this moment a candidate for governor on William R. Hearst's Independence League ticket. Corruption in municipal office was not receiving any attention from him. He was preoccupied with a somewhat preposterous ambition. Summoned from the interior of the State by the editor of the Examiner, he was told what was wanted. He was not at all in-

clined to obey. It was necessary to hold two or three sessions with him to convince him of the advisability of making Heney his deputy. His campaign manager, Joseph J. Dwyer, who shortly afterward loomed up as one of the string of counsel employed by the Spreckels sanhedrim, threatened to quit his job if the appointment of Heney were not made. The editor of the Examiner also made a threat or two, and Langdon finally saw the light, and thereafter in all the State there was not a more vociferous patriot.

Francis J. Heney was no ordinary assistant to the district attorney. Ostensibly a public official, in reality he was the agent of a little coterie of private citizens. Before the public he posed as a volunteer actuated by zeal for the public good. He so proclaimed himself in the press and on the bema; for be it understood during the early stages of the Graft Prosecution there was a steady copious flow of oratory. At brief intervals appeals were addressed to the passions and prejudices of the multitude, and Mr. Heney was very active exhorting the public to give him their sympathy and support, and promising to send to jail certain men, unindicted and uncharged, whom he vituperated and vilified. To the great body of citizens from which jurors were to be drawn this representative of the department of justice addressed his burning philippics, exhausting the vocabulary of personal abuse and indulging in coarse and

brutal tirades. The supposition being that his services to the civic cause were given gratuitously, naturally his perfervid oratory was impressive. It was regarded as the ebullition of righteous indignation, and it was not until the prosecution had dragged along for nearly three years that Heney's emotions were accounted for by anybody on any hypothesis different from the one that he was pleased to have the people accept. Rudolph Spreckels having been required to produce a statement of the moneys he had expended in financing the prosecution some interesting facts were brought to light. The statement showed that Heney had received \$23,828.22, not as a fee, however, but for "office expenses." It also showed that his partner, Cobb, who had played a very inconspicuous part, and who formed the partnership with Heney at the inception of the prosecution for the purpose, so it was said, of attending to civil business, had received \$25,000. Next on the list was J. J. Dwyer, the attorney who managed District Attorney Langdon's campaign for governor. It developed that he had become a "silent" partner of the firm of Heney & Cobb. Dwyer was paid \$13,400. There was also an item of \$11,000 paid to Hiram Johnson, for legal services, the same Hiram Johnson who was elected governor on his record as a civic patriot. All these men were passionate prosecutors. They were passionate in court, and they were

passionate on the platform when pleading either the cause of the Graft Prosecution or its political candidates. And their oratory was effective because nobody suspected that they were being paid. Indeed they didn't appear to suspect it themselves, for their uniform retort to every criticism against the Graft Prosecution was that it had been purchased by the interests.

So Mr. Heney, as we have seen, was quite different from an ordinary assistant to a district attorney. He occupied a curiously anomalous position, all the facets of which were not visible at first glance; not, indeed, till after he had been pounding away at the so-called higher-ups for about three years. For instance his official connection with the federal government was a most belated discovery. It was known, to be sure, that President Roosevelt was in sympathy with the Graft Prosecution. His sympathy he vindicated from time to time with letters and telegrams to Rudolph Spreckels, solicited, presumably for public consumption in pursuance of the policy to keep public sentiment at white heat. It was reported that he had been promised the head of Mr. E. H. Harriman on a charger, and the Bulletin announced that Harriman would be indicted. Detective William J. Burns of the secret service, it was known, was President Roosevelt's contribution to the cause of virtue, but that Heney was on the pay-roll of the federal Department of Justice most of the

time that he was procuring indictments from the grand jury of a State, was one of the precious esoteric secrets that constituted the soul of certain great designs as "mysterious as the coy fountains of the Nile."

When Heney attached himself to private interests in San Francisco it was supposed that his connection with the federal government had ended. It was supposed also that his income from all sources had ceased, and that consequently he was a genuine self-sacrificing patriot, which supposition naturally went a long way toward inspiring public confidence and the sentiments of gratitude and esteem. His self-sacrifice was well advertised by the pro-prosecution press. It was frequently alluded to as proof of his disinterested devotion to the public weal. The Bulletin went so far as to compassionate him on the rapid decline of a bank account for which there was no recruiting, and finally that sympathetic journal called for subscriptions to a Heney fund, hoping thus to keep the wolf away from the Heney door. It was a little astonishing, therefore, and also gratifying, to learn, after nearly three years had gone by, that at least Mr. Heney had no office expenses to defray, Mr. Spreckels having shouldered that burden, which amounted to \$500 a month. It was still more astonishing when in the archives at Washington was found a bundle of vouchers and other readable matter conclusive of pro-

tracted and profitable relations between the Department of Justice and the San Francisco prosecutor. From the Washington records it appears that Heney's arrangements with Attorney-General Bonaparte as to compensation for services were singularly indefinite. Heney was first employed as a federal attorney in 1904, and his employment ended in January, 1907, when he became an assistant to the district attorney of San Francisco. For his services as a federal attorney he received \$69,000. Of this amount \$33,000 was paid after his resignation. It has been explained that several amounts which were paid him during the years 1907, 1908 and 1909 on the authorization of President Roosevelt's attorney-general were "deferred payments." Why these payments should have been deferred has never been explained. Admitting that they were for services rendered in the years 1904, 1905 and 1906, as asserted, then Heney was paid more than \$20,000 a year, though during a great part of the period of his employment he was attending to private practice in San Francisco. The facts may be as Heney's defenders would have us believe, but there is certainly ground for the suspicion that was voiced in San Francisco, the suspicion that the "deferred payments" were for services rendered to the people of the State or California as well as for services rendered to the people of the United States. At any rate it is evident that such might have been the case,

and that there was established in this instance a precedent pregnant with infinite possibilities, especially for a chief magistrate of the Roosevelt temperament, who might be inclined to employ for his private ends the grand juries of the several States.

At once a federal and a State prosecutor and the representative of the men composing the reform cabal, Mr. Heney assumed absolute control of an important branch of the juridical department of the State government. He was given full power to act; to exercise his judgment and his discretion in all matters however remotely or intimately connected with the main business in hand. But of course he always acted with due deference to the wishes of the men by whom he was employed, especially with due deference to the wishes of Mr. Spreckels, or "Citizen" Spreckels, as he was hailed by the courtiers nearest the throne.

Through the juridical department the prosecutors were soon able to seize all other departments of government. For a short time Schmitz held onto the office of mayor. He might have been removed by civil process; otherwise he could hold his office until convicted of a crime. At the request of a committee of the civic bodies he agreed one day to resign with the understanding that this committee should appoint his successor. When the committee submitted the proposal to "Citizen" Spreckels that gentleman flared up like

a turkey-cock. The suggestion was in the nature of lese majesty. Mr. Spreckels wished it to be distinctly understood that he was the head and front of the work of civic redemption. What right had anybody else to form plans not in harmony with his? Such presumption was intolerable. It was a sign of some kind of infernality. "Citizen" Spreckels pronounced the committee corrupt hirelings of the Southern Pacific Company, and it was immediately dissolved by the chairman, Charles Slack, a lawyer, an ex-judge, a member of the board of regents of the State university, a gentleman whose reputation in all the length and breadth of California is without stain, whose motives have in no other instance been impugned. But in those days to have one's motives impugned by "Citizen" Spreckels was almost tantamount to being hurled from on high—

To grinning scorn a sacrifice,
And endless infamy!

"Citizen" Spreckels went about the regeneration of San Francisco in his own way. He had Mayor Schmitz convicted of a crime that has since turned out to be no crime at all, and then he filled the vacancy. With whom do you suppose? Presumably with some worthy citizen. Quite to the contrary; with one of the members of the corrupt board of supervisors. These self-confessed grafters were still in office. They were doing business at the old stand; and

from testimony since given in court it was learned that they were still grafting in the old way, not with the mediation of Ruef, but indirectly under the auspices of the Graft Prosecution. It was also learned that their retention of office was in accordance with their agreement with Spreckels, who, it was testified by one of his own witnesses, was so generous as to give them the assurance that they might even banish the fears inspired by rumor that an attempt would be made to compel them to disgorge their booty. And it was by these grafters in office that a mayor was appointed at the instigation of "Citizen" Spreckels, the individual being one of their own number—Supervisor Boxton, a self-confessed criminal like the rest.

Here indeed apparently was a curious state of affairs; nay, in the opinion of the superficial observer, a shocking state of affairs. And superficial observers were not wanting at the time to censure the Graft Prosecution for complicity in this species of government. But critics were promptly overwhelmed with abuse. And the regenerators had a plausible excuse for their conduct ready to hand. They explained that the grafters were mere nominal functionaries—"good dogs" as they described them—"who did as they were told." And this was doubtless the truth. But this truth in the course of time like other truths carried with it something of opprobrium; so much so that the prosecutors desired it to be

forgotten. The truths of the Graft Prosecution accumulated by slow degrees. The light in which these truths appeared separately was quite different from the light in which they were grouped as the plot of the drama approached the catastrophe. And so it was that the graft prosecutors became rather fearful of recapitulation. On the trial of Patrick Calhoun, president of the United Railroads, when Supervisor Nicholas, speaking of his "good dog" days, said that he voted as he was told, the special prosecutor objected to the testimony saying, "According to this class of testimony the prosecution might be made out greater criminals than these people." The frankness of Mr. Heney on this occasion was unprecedented. Considering the testimony that followed, it was inept. This testimony was that Supervisor Gallagher in the "good dog" days acted as a messenger, carrying instructions from the district attorney's office to the supervisors. And Nicholas was asked: "Was it not said to you by Mr. Gallagher that you were to remain in office and vote as you were told?" The witness answered, "Yes, sir."

"And you voted as you were told?" was the next question.

The answer: "Whatever Gallagher told us to do after that we pretty near done it."

So we see that this private cabal exercised the sovereign power of the municipality. First they took charge of the district attorney's office, and

behind them was the power of the united daily press. Then they took charge of the mayor's office and of the whole legislative body of the city. In time this state of affairs became obnoxious. The Examiner (W. R. Hearst's paper) and the Chronicle began mildly to complain. They perceived that the reformers were "doing politics." But the Bulletin remained faithful and steadfast, echoing every day the sentiments of the prosecutors, and drooling venom on everybody that dared dissent. The Call also was faithful, which was to be expected, the proprietor being John D. Spreckels, who was always the obedient son of his father Claus Spreckels.

After several months of "good dog" rule, and just at the opening of the municipal campaign, the grafting board of supervisors still in office, at the behest of the prosecution cabal, elected to the office of mayor Dr. Edward R. Taylor, a political associate of James D. Phelan. Taylor increased the power of his sponsors by appointing William Biggy chief of police. Biggy was the elisor who had charge of Abe Ruef in a private prison while the boss was undergoing the "third degree" night and day. Biggy was also the elisor who had charge of the Schmitz jury. It was expected that through him Detective Burns would direct the affairs of the police department. And Burns was permitted to direct the department for the purposes of the Graft Prosecution up to a certain point, and then Biggy for proving

recalcitrant was hounded by the pro-prosecution press to the end of his days. His death was one of the tragedies of the Graft Prosecution, and will be dealt with in another chapter.

Now with all this power in the hands of a private cabal, and with two complaisant judges on the bench by whom all the indicted men were to be tried, it would seem that the cards were stacked for almost any kind of achievement. And yet the Graft Prosecution was a failure! At the end of four years the regenerators are able to point to but two achievements—the routing of the grafters (for which they are really deserving of great credit) and the imprisonment of Abe Ruef. But neither of these achievements from their standpoint is a triumph, since their darling aim was the punishment of the higher-ups, the putative source of all corruption.

II

MEN AND MOTIVES

*A Study of the Leading Regenerators and of Their
Attitude Toward the Chief Grafters and
Some of the Higher-ups*

A familiar maxim tells us that to accomplish a great good men may be justified in doing a little wrong. On this principle the apologists of the Graft Prosecution have palliated what they could not applaud. They palliated by wholesale and blindly. The criticism to be made of the Graft Prosecution is that it did neither great good nor little wrong. And if anything is to be said in extenuation of its excesses it must be on the theory that the regenerators were carried away by misguided zeal. Most of the abuse of power in this world can be traced to persons who believed themselves right. But whatever "Citizen" Spreckels and his associates thought of themselves, it must be confessed that they inspired strong faith in their rectitude of purpose, for the people of San Francisco were quiescent toward them even after ceasing to approve their methods. At the same time it should be explained that only in small quantities did the truth percolate through the screen of secrecy erected by the regenerators. There was much that was

esoteric in their doings. Like the priests of ancient religious cults they felt that the strong meat of orthodoxy was not for the common herd. When the scheme of redemption was young nobody outside the magic circle was vouchsafed an inkling as to wholesale immunity for grafters. If like a bolt from the blue the news had come that all the corrupt officials were to be set free and that punishment was to be reserved only for the men who had contributed the spoils, it would have shocked and perhaps caused a revulsion of public sentiment. At first the public was told that none but the supervisors were to be granted immunity, which was considered bad enough. But the fact that the regenerators were disposed to grant Ruef and Schmitz immunity was not divulged. Well was it understood that such an act of generosity would provoke great indignation. Not till the graft cases were brought to trial was it learned that Ruef and Schmitz were privileged to accept immunity. This information was obtained from James Gallagher, the chief witness for the prosecution, whom Rudolph Spreckels, the dispenser of immunity, informed that the sentiment of the prosecution was that the only real criminals were the officers of the public service corporations who had tempted and corrupted the servants of the people.

Not the district attorney but Rudolph Spreckels, a private citizen, was the per-

son who conducted negotiations and pledged the faith of the constituted authorities. And Rudolph Spreckels, according to Gallagher's testimony, purposed making use of Ruef and Schmitz as well as of the supervisors, and letting them go. "He told me," Gallagher added, "that the public service corporations were his objective point." In what degree, in Mr. Spreckels' opinion, Abraham Ruef was a victim of temptation may be learned from the transcript of testimony in the case of Patrick Calhoun. The testimony bearing on this point was given by Mr. Spreckels himself. He admitted that he formed Ruef's acquaintance years before the opening of the prosecution. He said:

"Ruef called at my office when the city was about to issue bonds and asked me if I would get together a syndicate of capitalists for the purpose of bidding on those bonds. I think that was around 1901 or '02. Ruef said that he would guarantee that if I did get such a syndicate up our bid would be a successful bid, and that we would not be obliged to bid above par. I asked him how he purposed to carry that out, and he said, 'Why, that is a simple matter. You know my connection with the labor unions and the Labor Union party, and just about the time that the bids are to come in I will arrange to tie up this town, and we will have the biggest strike that the community has ever known, and I would like to see any of your capitalistic friends bid on

the bonds under those circumstances, excepting yourself and those that are in the know.' ”

Asked if Ruef referred specifically to the street railroad system, Mr. Spreckels made reply that he did.

“You believed,” said the attorney for the defendant, “did you not, that Mr. Ruef who offered to call a strike with the accompanying bloodshed and to tie up the town from one end of it to the other, that you would give him immunity in order to get his testimony against Mr. Calhoun if it could be done, did you not?”

And Mr. Spreckels gave this answer: “Mr. Ruef did not commit the crime of calling the strike.”

Ruef did not commit the crime because the virtuous Mr. Spreckels, whom he had foolishly considered so avaricious as to be disposed to enter into so vicious a conspiracy rejected the proposal.

In justice to Mr. Spreckels it must be admitted that whatever might have been his conception of the relations existing between Abe Ruef and the public service corporations, it is not improbable that he regarded the supervisors as victims of temptation. Furthermore it is not to be denied that much is to be said in favor of his theory of the desirability of punishing the so-called higher-ups. At any rate it was vigorously supported by the philosophy of his associates, the new philosophy preached in San

Francisco for the first time in the world's history, the philosophy that teaches how venial is the transgression of the public servant who takes a bribe compared with that of the man who bribes him. Strong in their faith in this philosophy, pro-prosecution editors moralized on the sad predicament of the poor men who had been seduced by the predatory rich. They felt very sorry for the grafters, miserable wretches that they were, victims of an irresistible appeal to a primal passion. To this curious doctrine many converts were made, for the reason, perhaps, that the newspapers recommended it as though they had received it from Heaven. The average citizen, who had twice elected Eugene Schmitz to office, knowing him to be the puppet of a man who was acting as attorney not only for public service corporations but for saloon-keepers, contractors and every individual who had any business relations with the municipal government—this average citizen, artfully suggestionized, was in sympathy with the grafters and greatly incensed against the bad rich men who had seduced them.

Doubtless the public service corporations were Mr. Spreckels's "objective point" at the inception of the enterprise, but the history of that enterprise shows that its founders devoted nearly all their energies to the prosecution of the officers of one particular public service corporation—the United Railroads. And the records show that

toward the officers of at least one corporation the prosecution was exceedingly placable. That one was the Home Telephone Company, the officers of which appeared to be in an extremely bad box. They had not had Ruef on their payroll. But they wanted a franchise and bought it outright. The supervisors had previously received money from an agent of the Pacific States Telephone and Telegraph Company, which had been paid to them to induce them to prevent competition by denying the petition of the Home Telephone Company. But the supervisors, poor, miserable victims of plutocrat temptation, wouldn't "stay bought." A representative of the Home Telephone Company was indicted, but was never arrested. No attempt was made to find him. There is but one explanation of this negligence, and this explanation is only a matter of conjecture. One of the officers of the company was a relative by marriage of a justice of the Supreme Court of the State, and the prosecution, it has been conjectured, realized the importance of having that court acquiesce in the strange kind of justice that was being administered by its puppets in the trial courts. This explanation may not be correct, but it is the one that was generally accepted by hostile critics of the methods and interpreters of the motives of the prosecution.

•

As it is from the motives of men that actions receive their color and character, perhaps if all the mainsprings of the prosecutors' conduct were visible we might be less inclined to censure. It may be well therefore before resuming the thread of this narrative to inquire whether there is any reason for suspecting that Mr. Spreckels and his associates, while especially desirous of convicting the officials of the United Railroads, were indifferent to the fate of others. Now it may be easier to estimate their motives if we know something of their antecedents. When a good man falls into evil it is deemed proper to allow him the benefit of his past record and to be careful to remember it when interpreting his later actions. The same principle may be applied to the man who asserts a claim to our confidence and our admiration. It is not to be argued that the motives of all the men behind the Graft Prosecution were wholly bad. The paramount motive may have been the purging of a city steeped in corruption. But as in the case of the conspirators who murdered Caesar it may be doubted whether all were actuated by zeal for the public good. When the motives of the men behind the Graft Prosecution were first challenged those men took the position that motives were of no consequence. Of course they affirmed the purity of their motives, but at the same time they pointed out that as it was merely their purpose to give men accused of crime the benefit of trial by jury it did

not matter whether their civic patriotism was entirely free from alloy. If, said they, the accused are not guilty they will have abundant opportunity to prove their innocence, the court will safeguard their rights. At first blush this reasoning seems plausible. Not so when one stops to consider certain matters of some importance: that these zealous men had the support of the united daily press; that they were permitted to impanel a grand jury and direct it as they saw fit, and that besides having absolute control of the district attorney's office and the police department they enjoyed such confidential relations with the two judges to whom all the so-called graft cases were assigned for trial, that in the course of time the judges became frank partisans of the Graft Prosecution in all political manoeuvres for the retention of power. Now if these men were animated by sinister motives, even an innocent man might have reason to dread a trial at their hands.

So whilst their motives may be estimated with some degree of accuracy from their acts, meantime let us scrutinize the men themselves that we may be better able to judge whether they would be likely to abuse the great power which they possessed. Foremost among these men is Mr. Rudolph Spreckels, a young millionaire, who, previous to his appearance in the role of civic regenerator, had never taken the trouble to cast his vote at an election. Civic patriotism was in

him a belated passion. Into public life he had never ventured till shortly before the earthquake, when, with his father Claus Spreckels he entered into a dispute with the United Railroads and threatened to build a rival street railroad system. Rudolph Spreckels is a man of a haughty, domineering spirit, very much of the same temperament as his father who went through life breeding animosities and hostilities. For nearly fifteen years that father was at war with three of his children—an only daughter and two sons, Rudolph and Augustus Spreckels. To each of these sons he gave a fortune, yet the two joined in a most bitter contest in the courts against their aged parent. Him they pursued with preternatural vindictiveness. No father ever experienced greater pain than did Claus Spreckels from the bite that is even sharper than a serpent's tooth. Painful as it is to dwell on this phase of the career of Rudolph Spreckels, it must be glanced at that we may understand the force and nature of the character that dominated affairs in San Francisco for nearly three years. To what extremes a man of the temperament of Rudolph Spreckels might go as the ruling spirit of an oligarchy, can be judged from his ruthless and relentless pursuit of his own father, but it would be as unpleasant as it is unnecessary to go minutely into the shocking details of that contest.

Associated with Mr. Spreckels in the railroad

enterprise was Mr. James D. Phelan, and this gentleman was associated with him also in the Graft Prosecution. Indeed it is believed that Mr. Phelan prompted the whole scheme of reform. Mr. Phelan like Mr. Spreckels is also a millionaire by inheritance, but unlike Mr. Spreckels he has been active in politics since the days of his youth. The goal of his ambition is the United States Senate, but as he is a Democrat, and as Republicans usually predominate in the California legislature, his constituents have never been able to do more than reward his devotion to party principles with a complimentary vote. As mayor of San Francisco he made an excellent record, and grew strong in public favor till ambition o'erleaped itself. By revolutionizing the government with a new charter he was able to centralize power in himself and create a political machine for the furtherance of his ambition. Then followed a revulsion of public sentiment caused by the suspicion that the artful mayor was applying his power to his own ends. The result was the swinging back of the pendulum and the election of the fiddler sponsored by Abraham Ruef. That was nearly ten years ago. And Mr. Phelan has been vainly endeavoring to rehabilitate himself ever since. His most recent effort was in the guise of an anti-Japanese agitator and bosom friend of the downtrodden wage earner. Though known in San Francisco as the enemy of every dollar that isn't his own,

Mr. Phelan has some agreeable qualities, such as a flippant wit, a command of the tricks of language for oratorical purposes, and a taste in art—not much, but just enough to play the dilettante. A pleasant acquaintance to meet between the acts of a comedy is Mr. Phelan, though as unemotional as a fish.

To these men, whose portraits have been faintly outlined, was given control of the machinery of justice that they might purify a corrupt municipal government and punish the criminals by whom it had been debauched. And as we shall see it was not long before they were concentrating all their energies, all their resources, on one paramount achievement—the conviction of Patrick Calhoun, President of the United Railroads. Was it because they regarded him as the worst of all the higher-ups? This is a question about which we shall be able to speculate on a pretty broad base of knowledge before the end of our story. The critics of the Graft Prosecution often intimated that nothing short of unadulterated vindictiveness could inspire such brutal treatment as Patrick Calhoun received at the hands of the regenerators. On an average of five days in every week, for more than four years, he was held up to execration in the columns of the *Bulletin* and the *Call*. Events in his private life from day to day were made the theme of lampoons and tirades calculated to incite against him the most bitter hatred of the labor unions as well as the furious indignation of civic reformers.

Now, as it has been charged that the prosecution of Calhoun was inspired with vindictiveness rather than virtuous resentment, it may be well to glance at certain records and consider certain matters which critics hostile to the regenerators have relied upon as the basis of their theory. From the records of the court it appears that in the year 1905, the year preceding that of the earthquake and fire, when the main lines of the United Railroads were operated by cable, it was proposed to convert the one in Sutter street into an overhead trolley road. Many of the property owners on that street, instigated by Rudolph Spreckels and his father, Claus Spreckels, protested. They demanded that the conduit system be adopted. A long controversy followed between the property owners and the officials of the corporation, and at its close Rudolph Spreckels announced that there could be no settlement and that "it would be war to the knife." Meanwhile, however, it became known that he and his father and James D. Phelan had determined upon building an opposition street railroad system covering the whole city. Rudolph Spreckels was quoted in one newspaper in these words: "It will be built regardless of any action that can be taken by the United Railroads." His company was incorporated the day preceding that of the earthquake and fire. It has never been heard of since. But it might have been heard of after the fire had not the United Railroads obtained permission to

substitute the trolley for the cable system. As Spreckels intended to introduce the conduit system and use the rails of the United Railroads over a certain number of blocks in each street, as provided for by law, this project would hardly have been feasible with the trolley system in operation.

Of course the circumstance that Rudolph Spreckels and his father were out-manoeuvred by Patrick Calhoun in a business matter is not to be taken as conclusive that vindictiveness was the only motive with which the prosecution of the railroad president was inspired. At the same time it is not to be gainsaid that vindictiveness is the most distinctive trait of the Spreckels' character. Spreckels pere, who loomed a swart figure behind his son in the original controversy with Calhoun, and, until his death, behind the Graft Prosecution, was one of the most vindictive of men. His reputation for vindictiveness was widespread. A man of prodigious arrogance, he was intolerant of the slightest opposition. Nobody ever incurred his disfavor without suffering some kind of punishment. Once upon a time he built a competing gaslight system in San Francisco to revenge himself on the president of the gas company who had failed to act on his demand that a nuisance be abated. The competing system, which was to give the people cheaper gas, he sold out to the old company at a good profit, just as he sold out to the sugar

trust after promising to oppose it forever in the interest of the dear people.

Still keeping in mind the point under discussion—the question of motive—we come to the two memorable street car strikes that brought distress and suffering to San Francisco. Those strikes occurred when San Francisco was going through the early stages of the process of rehabilitation. So widespread were the effects that this industrial strife was hardly less than a supplementary catastrophe. And those strikes were an incident of the Graft Prosecution; so important an incident as to deserve treatment in a separate chapter.

III

THE CAR STRIKES

*Because Union Men Demand and Are Denied Lower
Wages a City is Made to Suffer from Lawless-
ness and Business Paralysis*

Nothing so raised the hopes and encouraged the people of San Francisco after the earthquake and fire as the reconstruction of the street car system. The United Railroads Company, which owns nearly the whole traction system of the city, started its cars while the ruins were still smoking. An electric car was the symbol of hope and confidence: It signified the faith of a great corporation in the future of a city housed in shacks which had hardly begun to think of righting itself. A few months later, in violation of an agreement with the railroad company, conductors and gripmen quit work and all San Francisco walked. There was a temporary adjustment of differences, there was arbitration, but what followed in the course of time approximated civil war. The spirit of the shattered community was almost broken.

A unique industrial conflict was this which the stricken city experienced. It was unique because it was not the result of friction between an employer and his employees. As we shall

see, there had been no clamor on the part of the employees of the United Railroads for a better apportioning of wages to work. What, then, was the cause of the strikes? This is a question the reader must solve after acquainting himself with the facts.

Long after the strikes had passed into history they became an issue in the graft cases, the regenerators having made the accusation against Patrick Calhoun that he precipitated the strikes to win public sympathy. This they did when they learned that Calhoun had procured a mass of affidavits for the purpose of showing that the strikes were instigated by his enemies to embitter public sentiment and to serve their political ends. There was no question at all as to the fact that the strikers were the instruments of some person or persons moved by sinister motives.

Now to facilitate study of the motives and the political purposes that were uppermost in the minds of some men in those days we must go back to the morning of the great catastrophe when all San Francisco was in panic. On that dark morning Mayor Schmitz, the man who is today an outcast, was an inspiring and inspiriting figure. A great crisis called forth his innate qualities, and they were those which commanded the admiration of everybody. Accept all the evil told of him and reject the good, and Eugene Schmitz will appear a repulsive char-

acter, but not so if we consider only the man and his work during the terrible crisis of 1906. How great the contrast between the governor of the State, George Pardee, pious reformer, and the mayor of the city, Eugene Schmitz, practical unholy politician, the one so timid and vacillating as to be appropriately nicknamed "Weak Brother"; the other exhibiting a gift for organization and command that heartened a people appalled by disaster and bowed beneath a great weight of woe. The times were exceptional, pregnant with momentous events, and the man was on a par with the times. The midst of a disjointed world seemed his appropriate field of action.

On Schmitz devolved the task of bringing order out of chaos. And he was preoccupied with it before the conflagration had swept beyond the block where it started. This labor union mayor called round him before noon of the day of the catastrophe fifty of the most prominent men in the city. No longer did he depend for guidance on Abraham Ruef. The man of genius knows instinctively where to look for suitable talent. In this emergency Eugene Schmitz took counsel of Mr. Garret McEnerney, the leader of the California bar, a man of exceptional attainments, of brilliant intellect, a commanding character, the kind of man in whom, whatever he undertakes, one may place unlimited trust. Under McEnerney's mentorship Mayor Schmitz

organized a committee which absorbed all the powers of government. It became a committee of public safety. Mayor Schmitz was chairman. As such he ceased to be the representative of a class. Indeed, in forming his committee he gave but scant recognition to the unions, selecting his men, as was right, with a view to surrounding himself with expert ability. But in the dawn of rehabilitation there was no jealousy or distrust or envy. There is nothing like a great sorrow to unite men in loving brotherhood. Calamity was the furnace that melted many evil passions and fused hearts long estranged. It was in the spirit of the times that Mayor Schmitz acted. He gave but one harsh order—that all looters should be instantly shot. It was a necessary order. For the chairman of the relief fund committee he selected James D. Phelan, his most vindictive political enemy, the man whom he succeeded in public office and whom he knew to be always on the alert for opportunities of improving his prestige and manipulating the political machinery of the city and State. This position brought Phelan in close touch with the great horde of refugees, and enabled him to pursue his favorite pastime of improving his prestige as a public spirited citizen. Rudolph Spreckels was made a member of the committee, and the two millionaires had no difficulty in dominating it. Together they managed the business of distributing the hundreds of thousands of dollars

that flowed into the city in the form of relief donations.

It was not then known that these men had planned the prosecution that was started some months later, but, as was afterward learned, that enterprise had been under discussion, and while the Committee of Fifty was still working in harmony Phelan and Spreckels had their spies employed in stalking Schmitz and Ruef through the city's debris. But of course they are not to be criticised for that. As a matter of fact the Graft Prosecution was anything but premature. In justice to Schmitz, however, it must be said that so far as the records go there is nothing to show that he was guilty of any misconduct after the earthquake. And so that the political bearing of the situation may be understood it must be explained that a temporary rehabilitation of Schmitz occurred in this very period. Aware of the fact, he remarked one day, "My public career will date from the earthquake," and the newspapers quoted and approved. Schmitz was spoken of as a likely candidate for governor at the fall elections. Some men might have been eager to pull him down at this time. Soon it began to appear that he had lost friends. As he had kept all the saloons closed for more than two months, and as he had maintained law and order with military and puritanical exactness, murmurs of dissatisfaction presently emanated from his former stronghold, the

tenderloin. Moreover, labor leaders were heard to complain about the personnel of the Committee of Fifty. They remarked that Schmitz had allied himself with the business interests. Presently the Bulletin began suggestionizing the employees of the United Railroads.

In the Bulletin of the 10th of August, 1906, is to be found the first suggestion to the carmen. It is in the form of an editorial entitled: "Why the workingman wins with the odds against him."

Strikes are what is won by the workingman, according to the Bulletin. They win because "capital makes cowards of us all," because "the rich man has much to lose." Then follows a list of the rich man's luxuries. In conclusion this naively incendiary writer tells us that the workingman is sentimental rather than mercenary in his devotion to his union and "will not quit when his employer offers him wages above the union scale." Nothing about a street car strike in this editorial. But five days later, on August 15, appeared an editorial headed, "Demands of the carmen for a three dollar wage." From the first paragraph it appeared that no demands had been made. It had been merely reported that the carmen intended making demands. The Bulletin hoped that if they did so, "Patrick Calhoun would see his way clear to granting their petition." Then followed a long argument in favor of the breaking of the agreement between the company and its employees. The argument was based on the prop-

osition that the cost of living had increased since the earthquake. Nothing was said of the increased expenses of the company or of the great cost of reconstruction. The following day the Bulletin published a news item headed, "Carmen will ask for an advance." This is the opening sentence: "The United Railroads' employees enthusiastically received the suggestion of the Bulletin that they should be paid a higher rate of wages." So here we have a frank confession that it was on the Bulletin's suggestion that the demands were made. On August 17 appeared an editorial expounding the "Wages of street carmen in the light of high rents." On August 19 the Bulletin announced that the carmen would that day demand \$3 a day and eight hours. On the twenty-first the Bulletin editorially approved the demand. At this time Patrick Calhoun was not in the State. The union officials were told that he would arrive August 26. The strike movement was hurried forward, and though the demand for more wages and shorter hours was not made till August 20 the men quit work on the night of the twenty-fifth. Why was there this great haste? An explanation comes from J. H. Bowling, secretary and treasurer of the carmen's union, whose veracity is not here vouched for. In a sworn statement made for Patrick Calhoun he said that Fremont Older, editor of the Bulletin, had urged the members of the executive committee to strike

before Calhoun's arrival, saying that if Calhoun arrived they might not be able to strike. From Bowling it was also learned that when the Bulletin was fomenting discontent large bundles of that journal were sent to the car barns each day and distributed free.

From Bowling we learn of another incident of some significance with reference to the state of affairs immediately preceding the strike. From this incident it appears that the leaders of the strike movement were well aware that the carmen were not eager for the conflict; also that they were fearful that Mayor Schmitz might avert a conflict and thus increase his popularity. They remembered that about a year before this time, when a strike was threatened, Mayor Schmitz appeared at a meeting of the union just before a decisive vote was taken and by an impassioned speech to the men prevailed on them in the interest of the city to remain at work. According to Bowling it was feared the mayor would repeat this performance at the meeting held in August, 1906, to decide whether a strike should be called. Bowling swears that Edward Livernash was in a cab outside the hall ready to answer Schmitz in the event of his counseling peace. Livernash is an eloquent labor agitator, a lawyer and journalist, a man of the type of the "Friend of the People" of the French Revolution. He was for a long time connected with the Bulletin in the capacity of editorial writer,

and he wrote many editorials fomenting industrial strife. He was attorney for the carmen's union and the intimate associate of Richard Cornelius, president of the union. This Cornelius was an agitator, a shrewd politician and a member of the civil service commission. Appointed to that commission by Mayor Schmitz, he was retained by Mayor Taylor when the Graft Prosecution was in control of the municipal government, and of the Graft Prosecution he was a vociferous partisan.

As we have seen, all the employees of the United Railroads quit work on the night of the 25th of August. On August 27 the Bulletin printed an editorial beneath this headline in large type: "PATRICK CALHOUN, START YOUR CARS AT ONCE!" In this editorial the question was asked: "What right has an Eastern capitalist to come to this city, where he does business and where he does not live and where he receives three-and-a-half times the interest he is entitled to, which he carries off to the Atlantic seaboard for investment, and add to the fiery trials which have come upon it with such fury in the recent past?"

This Eastern capitalist suffered a greater loss from the fire than any Californian capitalist, a circumstance which, considered in connection with the part that he played in the work of rehabilitation, might reasonably be urged in extenuation of his offense of carting dividends away from San Francisco.

The strike called, Calhoun refused to recognize or deal with men no longer employed by him, men who had violated not only their contract but the by-laws and constitution of the union under which they were organized. In eight days he had employed twelve hundred men in the East and transported them by special trains to San Francisco. These men arrived at night, and in spite of the vigilance of thousands of pickets, were housed in the fortified and provisioned car-barns of the railroad company before the news of their arrival reached the public. This quick action of Calhoun's had not been calculated upon by his enemies. The governor of the State, who was afterwards an active partisan of the Graft Prosecution, espoused the cause of the strikers. In a telegram to Calhoun he protested against the importation of labor from other States. Calhoun was not awed by this message. He reminded the governor that it was his duty to enforce the law and give protection to men who wanted to work.

The United Railroads was ready early in September to resume business with a new force of men. But the plans of the men who instigated the strike having been disarranged they were for calling a halt. Public sympathy was with the railroad company, and the probability was that the strikers would suffer defeat. Liver-nash, acting as attorney for the union, proposed and was refused a compromise talk with Cal-

houn. Then the men were advised to accept Calhoun's terms—return to work and arbitrate their grievances.

That the United Railroads agreed to arbitration in good faith, and that the men who were counseling the union agreed only for a mean strategic purpose, is clearly shown by subsequent events.

By the terms of the arbitration agreement it was limited to the unexpired period of the contract between the carmen and the corporation. The arbitration committee presided over by Chief Justice Beatty of the Supreme Court of the State rendered its decision March 1, 1907. By this award the wages of motormen and conductors were advanced about twenty-five per cent; that is, they were awarded \$3.10, \$3.20 and \$3.30 for ten hours, the scale being according to the length of time each man had been in the service of the company. That this was a satisfactory wage is evidenced by the fact that when a new proposal was made by the carmen, just before the expiration of the time covered by the arbitration agreement, it was for an eight-hour day and a three dollar wage. But while the union was willing to accept lower wages, by the reduction of time which they demanded the expenses of the company would be greatly increased. That the rank-and-file of the union really wanted lower wages may well be doubted. Indeed it is more reasonable to presume that the proposal was designed only to cause trouble.

Meanwhile Patrick Calhoun, the man whom the regenerators accused of having provoked the second strike, which occurred on May 1, had gone to Europe. During his absence Richard Cornelius, the president of the union, was paving the way for new differences. Whether or not Cornelius was merely the tool of men who wished to harass the railroad officials, the fact is he preferred strife to peace. Also it is a fact that almost as soon as the arbitration committee rendered its decision Cornelius, or the men by whom he was inspired, planned a strike for the month of May. Of course this fact they did not make public. It leaked out much to their astonishment, and they quickly denied that a strike was contemplated. It was Cornelius himself who divulged the information, but this his associates never knew. The history of the whole intrigue is told here for the first time. The man who caused the truth to be made public was Edward F. Moran, president of the civil service commission. Cornelius told him there would be a strike in May. "The boys will be out on May 1," he said; "I'm going to Detroit to fix the matter up with the executive board so that nothing will interfere with our plan." Moran advised Cornelius to inform Mayor Schmitz, and he arranged a meeting between Schmitz and Cornelius at which the mayor was told what soon would happen. Then Cornelius left for Detroit, ostensibly to attend a meeting

of the Amalgamated Association of Street Railway Employees.

At this time Mr. Harry Creswell, one of the attorneys of the United Railroads, was a member of the police commission. When the strike of August, 1906, occurred Creswell sent his resignation to the mayor, but as the strike was soon over the resignation was not accepted. Early in March, 1907, Mayor Schmitz wrote to Creswell, saying he would accept his resignation because a strike was to be called in May. The following is an excerpt from the letter which was published in the *Call* of March 15, 1907: "I received information a few days ago that on May 1 another strike would take place. Of course I intend to try to avert it if possible. If a strike does take place—and from all accounts it seems almost unavoidable—your position naturally would be inconsistent as a member of the police commission." The *Call* accused Schmitz of "betraying the secret plans of the carmen." In other papers officers of the carmen's union denied that there was to be a strike. Cornelius heard of Schmitz's letter while in the city of Spokane en route to the East, and from Spokane he wrote a letter to W. C. Leffingwell, vice-president of the union. The letter, bearing date of March 17, 1907, contains the following paragraph:

"I see by the papers that Mayor Schmitz says there will be a strike unless he prevents it.

to us. I see by the papers
that Mayor Spohnitz says
there will be a strike
unless he prevents it. Well,
the only way he can pre-
vent it will be for him
or some body else to
get Patrick Calhoun
to come through with
the goods. It looks

Spokane, Wash.

190

EUROPEAN

say what he pleases
he aimed at me that
night as well as Livernagh
and by the powers if he
has anything let him
show it or admit like
a man that he has not.
As to Judge Beatty's deci-
sion I have not received
any copy. Nor has Johnson

Well the only way he can prevent it will be for him or somebody else to get Patrick Calhoun to come through with the goods. It looks like politics to be talking like that at this time. What do you think?"

From another paragraph in this letter it appears that at the time it was written Cornelius had not as yet read the decision of the arbitration committee.

On April 1 Cornelius wrote another letter to Leffingwell. This time from Detroit. It contained this paragraph:

"That statement of yours in the paper was all right. I don't see what made Mayor Schmitz make such a crack as he did in the papers. But it's all right anyhow, for the people might just as well know what is coming, for come it will. And I have great faith that we shall have the executive board with us this time, for I shall use every effort to make them understand the situation in San Francisco."

From all that Cornelius wrote to Leffingwell it is clear that when he left San Francisco, about March 6, 1907, it was with the intention of obtaining the assent of the national body, which his union represented, to call a strike on the 1st of May. Calhoun, who had not been in San Francisco since October, 1906, arrived in New York from Europe on the 17th of March, 1907. It was reported in the press that as soon as he learned that his company was threatened with

another strike he sought an interview with W. D. Mahon, president of the national association. Calhoun went to Detroit to see Mahon, but the latter was then sick in bed, and advised Calhoun to go before the executive committee, which he did, there confronting Richard Cornelius. Calhoun begged the committee to prevent a strike. He said that his reputation and his property were both at stake as a result of a political plot inspired by his enemies. He told of the strike in the summer of the previous year, which, he said, had been unjustly called to harass him, and declared that a new plot had been hatched. He pointed out that always he had been on friendly terms with union labor and had procured recognition for the unions in other cities. He professed a willingness to continue the arbitration wage for another year, and offered to enter into another contract on the spot. He concluded his talk with the statement that if a strike were called he would never again recognize the unions.

At this time the Graft Prosecution was plunging ahead under full steam, and the San Francisco papers were full of rumors of the probable indictment of the traction president.

Having explained matters to the executive committee Calhoun left Detroit for San Francisco, soon to be followed by Cornelius. And then came the demand of the union for an eight-hour day and a three-dollar wage, which would mean a twenty-five per cent increase in the cost

of labor to a corporation which was then facing bankruptcy.

The day before the strike was called Calhoun and all his subordinate officials were summoned before the grand jury, and for days thereafter they were kept dancing attendance on that body. Thus the strike and the prosecution began to move side by side.

The strike was the bloodiest and costliest in the whole history of industrial strife in this country. More than one thousand men were thrown out of employment, and for seven months San Francisco was in a state bordering on civil war. The whole city felt the shock of contest, for the fortunes and happiness of the whole community were involved. Business was paralyzed, many small firms were forced into bankruptcy. As all wage-earners belonging to unions were obliged to contribute to the support of the strikers, every unit of organized labor had a deep personal interest in the quarrel. Sympathy with the strikers consequently was widespread. The disorder that marked the progress of the strike made of San Francisco one vast Golgotha. In all its hideousness, its bloody and cruel details this strike was the essence of inhumanity. For a time few people had the courage to ride on the cars. In almost every block, wherever buildings were rising from the ruins, from ambuscades being continually improvised, cars were bombarded with bricks, steel rivets or whatever was deadly

and ready to hand. Acts of violence were for a time of daily occurrence, men were maimed and lives were lost. The press, which is nowhere as in San Francisco the palladium of the principles of organized labor, was more industrious in suppressing than in disseminating the news. Never did the newspapers impute lawlessness to the strikers, but without cessation the pro-graft organs assailed the indicted railroad officials with epithet and invective.

Rioting and bloodshed occurred the very first day that the United Railroads resumed business. Two policemen in plain clothes who attempted to board a beleaguered car in the midst of the riot were shot down by the non-union carmen, who supposed them to be strikers leading the assault. This of course was a most unfortunate occurrence, and bitterly were the carmen denounced for their fatal error. In the press of the next day the chief of police declared his intention to arm a police squad of one hundred with rifles and instruct them to shoot down strike-breakers. That day he met Patrick Calhoun in the mayor's office, and when questioned by the railroad president, affirmed emphatically that he meant what he had said. "Then," said Calhoun, "I'll arm all my men with Winchesters." The chief speedily changed his mind. Thereupon Calhoun said that he would send his men out unarmed, and see whether he could inspire respect by an exhibition of courage. What he promised was a

hazardous thing to do, but the despised strike-breakers did it. And the performance was in vain. A brave lot of men were those non-unionists. Several hundred of them were adventurous mountaineers from Kentucky, Tennessee and Texas, rough and ready soldiers of fortune who seemed to be wholly devoid of fear. Valiant, hardy, and so well endowed with the qualities which compel respect as to make one regret that they should be subjected to the indignities that were heaped upon them during that protracted and ugly struggle. A cruel and cowardly war was waged against them. While from ambushes they were attacked by day, at night as they stood in the full glare of electric lights assaults were made on them under cover and in the security of darkness.

How sanguinary the strike was may be judged from the fact that seven hundred and one men working on the cars were so seriously injured as to require hospital treatment. Besides these there were scores treated for flesh wounds at the several barns. How many union men were injured we shall never know, but from the court records it appears that thirty-nine were killed.

One incident of the strike tells the story of the attitude of the municipal authorities. Five of Calhoun's employees, who were trying to escape from a mob one day, while flying to a barn for refuge were shot down by three

policemen. Two of these policemen had been members of the teamsters' union and one had been a member of the carmen's union. All were made policemen during the strike. Another circumstance of some significance was the appointment by Mayor Taylor of Michael Casey to the chairmanship of the board of public works, which had supervision of the streets over which the cars were operated. Casey was president of the teamsters' union, and he was also a member of the strike committee appointed by the labor council. Cornelius was also a member of that committee, and he remained on the civil service commission all the time that the Graft Prosecution ruled the city.

It was largely due to this great strike and the passions which it roused that the Graft Prosecution was enabled to carry the municipal election in the fall of 1907. Throughout the strike the pro-prosecution organs were censuring Calhoun for not granting the union's demand, and Rudolph Spreckels in an interview in one of the daily papers accused Calhoun of inciting the strikers to violence by his observations from time to time, which observations were almost invariably evoked by the addresses to the public made by the officers of the carmen's union.

Be what it might the cause or inspiration of this bloody strike, which ended in the utter destruction of the carmen's union, there can be no question as to the attitude of the regenerators

from beginning to end. And certain it is that if none of them was instrumental in precipitating that strike, at least their relations and connections were such that they might have averted it. Deliberately to instigate whatsoever is bound to destroy life and property is a most heinous crime, and of that crime perpetrated in San Francisco in the year 1907 somebody is guilty. Must we regard the regenerators on account of their high character as free from suspicion. Some very strange, some very cruel, some very fiendish things, have been done by men who persuaded themselves that they had the welfare of their country at heart, and who made that the scale for the weighing of their motives.

Long after the strikers abandoned their cause, when the question as to who instigated the strike provoked crimination and recrimination, affidavits and depositions of some of the former union officials were procured. That was when Bowling made his affidavit. W. C. Leffingwell volunteered to have his deposition taken. He related that at a meeting of the union, during the strike, Cornelius reported that he had been down to see "the big fellows," and that there was no doubt but that Calhoun would be placed where he belonged. "Cornelius stated on many occasions," said Leffingwell, "that the thing to do was to keep the strike going on until Calhoun's trial and then he, Calhoun, would be on the bum." The witness related also that one day during the

strike the men were paid off with money brought to the meeting in a sack by Michael Casey, who said that it had been borrowed from Livernash.

Burns's detectives learned of the making of these depositions, and Bowling was induced to meet Fremont Older and give him a copy of the statement that he had made. The statement was published in the Bulletin before Calhoun had an opportunity to make it public. Thus did Older by anticipation render innocuous the stories told by the union officials. Older accused Bowling of conspiring with Calhoun to besmirch the character of the graft prosecutors, and had him arrested for libel. If Older had prosecuted Bowling, the whole truth would have come out. This he did not do. Bowling demanded a hearing. He caused Detective Burns to be summoned as a witness. Burns failed to respond, but was excused by Police Judge Deasy, a protege of the Graft Prosecution, who dismissed the case on motion of the complainant. The explanation of the motion was that the regenerators were too busy with other matters to find time for the prosecution of Bowling.



THE CAR STRIKE

Scenes on two occasions when sympathetic teamsters blocked traffic on the public streets.

IV

BIZARRE JUSTICE

*The Manipulation of Juries, Grand and Petty, a
Plague of Spies and the Employment
of General Warrants*

Of the many evils resulting from the Graft Prosecution the worst was the utter demoralization of the established processes of law and the impairment of public confidence in the administration of justice. Because of this California is today threatened with a constitutional amendment designed to render the courts sensitive to popular whim and subservient to the dictates of the mob. The San Francisco regenerators with the assistance of the newspapers and the cooperation of college professors and such distinguished university presidents as Benjamin Ide Wheeler and David Starr Jordan, inculcated in the public mind a curious notion regarding the duty of the ministers of justice. The Graft Prosecution acted on the theory that the courts ought to administer whatever they might conceive to be moral justice. This theory the newspapers approved and Dr. Wheeler actually voiced. The doctrine of the presumption of innocence was pronounced heterodox; and Francis J. Heney, in open court, denied that there was any

authority for the principle, gravely arguing that when a man was indicted he was presumed to be guilty. The prevailing sentiment was that the supervisors having confessed they were bribed, nothing could be clearer than that the men who bribed them should be sent to the penitentiary. The fact is, as we shall see, that what the supervisors confessed was quite different from what they were said to have confessed. Also, the fact is, as we shall see, that while there is no doubt of the guilt of the supervisors, there may be much doubt of the guilt of many of the higher-ups. But for the present let us confine ourselves to consideration of the irregularities of the prosecution.

The regenerators stoutly affirmed the absurdity of presuming anybody to be innocent. Though they did not express the sentiment they implied by their actions and loose talk that the higher-ups should be got to jail by hook or by crook. Indeed there were men in San Francisco who really considered it but a matter of form, the invoking of the function of the courts. As everybody knew the higher-ups were guilty, it was suggested, why not take a plebiscite on the question of punishment? This sentiment holds the germ of the principle on which it is proposed to apply the recall to the judiciary, an expedient objectionable on the ground, if on none other, of its cumbersomeness, since the referendum might be more rationally employed to the same purpose

in all kinds of litigation, thus obviating the necessity of a judiciary.

And so as it was determined to have chiefly moral justice administered for the benign purposes of the regenerators, Francis J. Heney gave his personal attention to the work of impaneling a grand jury. In deference to popular sentiment he was permitted to catechise each citizen on the jury panel and exclude every one that did not favorably impress him. Thus he managed to organize a very docile jury, one that produced indictments for him with something of the automatic readiness of a nickel-in-the-slot machine. His influence over the jury had all the potency of irresistible hypnotism. But, to be sure, the grand jury was in a most receptive and susceptible mood. How could it be otherwise, with propitious public sentiment clamorous for indictments, and the newspapers shrieking for indictments and assuring the people that as the jurors had the public interest at heart they could be depended upon to perform their duties in accordance with Mr. Heney's wishes? Such subtle flattery might reasonably have been expected to have the desired effect. The grand jurors, most of whom were stolid business men, unaccustomed to the limelight, having no previous experience of the joys of celebrity, awoke to the blare of fame, and realized that they were entitled to rank as civic patriots. With great enthusiasm some of these susceptible citizens became part of the civic re-

demption machine. A few of them were rewarded with public office, not by the people but by the gentlemen most capable of appreciating their disinterested service—the regenerators. One was rewarded even unto the second generation, his son being appointed police magistrate, thus becoming available for service to the cause.

It was thus the good work went on, and it was in circumstances such as these that days of terror dawned for men marked for slaughter; that prominent citizens, seized with panic fright, went scurrying about town invoking the influence of their friends to save them from indictment for they knew not what. Nothing more some of them knew than that detectives were at their heels, and that at some time in their lives they had incurred the enmity of some one of the prosecutors. William J. Burns, the Sejanus of the Graft Prosecution, had an army of spies at his beck and call. And all the while Francis J. Heney was issuing through the columns of an exultant press vague but portentous manifestoes susceptible of as varied interpretation as the dictum of a Greek oracle. By day he worked at the grand jury mill, grinding out indictments. By night he addressed public meetings, vituperating the men whom he was engaged in prosecuting. Always he went about with the forbidding aspect of a Fouquier-Tinville, starting gooseflesh with his frown. Parlous were the times while Heney's magnetic power over the grand jury

was at its height. In time that power diminished, the consequence being that all of the prosecutor's early promises were not realized; that is he did not indict all the men to whom he had opened up the melancholy prospect of a long sojourn in the penitentiary. Not that he relented, or that time assuaged his passion, but that some of the grand jurors revolted against the practice of indicting men without evidence. Thus, Mr. Heney failed to procure the indictment of William H. Crocker. He urged the indictment of that gentleman, but got only one vote, a circumstance which seems to argue that Mr. Crocker was not only guiltless of crime but almost an impeccable citizen, for at no other time were so many of the pliant jurors unresponsive to the wishes of the prosecutor. The failure to indict Crocker must have occasioned profound lamentations, for he was a marked man from the beginning. Besides he was one of the pet aversions of James D. Phelan.

Further disappointment of a grievous nature was caused by Mr. Heney's inability to procure the indictment of William F. Herrin, chief of the law department of the Southern Pacific Company. It was supposed that the indictment of Herrin would lead to the indictment of Harriman, but no evidence was available; not a scintilla of evidence against the officers of the great corporation which is reputed to have been in the business of corrupting the government of California

for almost half a century. This lack of evidence, however, was not necessarily a bar to prosecution, or at least to indictment, as is evident from the experience of more than one man. The case of W. I. Brobeck, reported in volume 152, page 289 of the California Reports, will suffice for illustration. "The indictment referred to in this opinion," says the court, "was subsequently dismissed by the Superior Court of the City and County of San Francisco upon motion of the district attorney on the ground that there is no evidence sufficient to put said W. I. Brobeck on his defense to said charge and that in the interest and furtherance of justice the said indictment as to said W. I. Brobeck should be dismissed and discharged." The district attorney who moved the dismissal on these grounds was the district attorney of the Graft Prosecution.

With reference to Herrin, Harriman and Crocker it may be truly said that the cunning spider had too long delayed the weaving of his web for the biggest flies of his seeking. However, Mr. Heney did very well in the days before the grand jurors became intractable. Men were indicted at his behest who have never been brought to trial, the reason being that they were beyond even the suspicion of guilt. Two notable cases are those of Thornwell Mullally, vice-president of the United Railroads and William Abbott of that corporation's law department. About two years after the date

of their indictment it was admitted in open court, by one of Mr. Heney's assistants, during the course of the argument in one of the graft cases, that there was no evidence against Mullally or Abbott, and that they never would be tried. Yet for five years these men were kept under bonds. Naturally the question will be asked, Why were they indicted? The answer is, In the hope of extorting testimony from them. It was thus the principle that the end justifies the means was applied in San Francisco.

Prosecutor Heney's manipulation of the grand jury was a masterly achievement. But quite comparable with it as a triumph of ingenuity was his manipulation of trial juries. Here again the prosecutor introduced some new and subtle stratagems; new to San Francisco, but not new to Mr. Heney, for he had tested them in Oregon in the land fraud cases, where President Roosevelt supplied him with resources almost equal to those which he enjoyed in California. With the aid of his large corps of detectives Mr. Heney familiarized himself beforehand with the character, the disposition and the sentiments of every man who entered the jury-box to be examined as to his qualifications to serve as a juror. Prospective jurors were interviewed for the enlightenment of the prosecution without being conscious of the fact. And thus it became an easy matter for the prosecution to determine when to accept, when to exclude and when to challenge. Mat-

ters were greatly facilitated by this method, about which, by the way, there is nothing inherently wrong. A fair and disinterested prosecutor, concerned about nothing but the administration of justice, conscious at all times of his obligations as a juridical officer, (his obligations to a defendant as well as to the State) might properly be indulged in the practice of this method. But consider Heney! Consider that this most zealous of prosecutors, representing a private cabal, went about boasting that he would send to the penitentiary every person indicted by his docile grand jury. Not privately, but in public, on the bema, he pledged himself to convict men, who, under the law are presumed to be innocent, who are entitled to the presumption of innocence even as late as when the jury retires to deliberate on the verdict. Consider that while this prosecution was in progress it was marked by an ebullition of all the meaner passions of human nature, and that in the heat and dust of conflict the opposing factions fought tooth and nail, might and main, with intense fury and brutal obstinacy. The spirit of that contest was manifestly not akin to the spirit of the square deal. Imbued with the prevailing spirit Prosecutor Heney availed himself of many advantages which the most generous ethics can hardly sanction. The fact is that he did not decline the service of jurors whom he knew to be so prejudiced as to be be-

yond the influence of evidence or the persuasion of a defendant's counsel. Proof of this is accessible. The proof came to light in the midst of a very exciting and dramatic situation that arose out of the rivalry engendered between opposing forces of private detectives. For be it known the defendants did not allow the detectives for the prosecution the exclusive privilege of interviewing jurors. Following the example of their pursuers they employed a large corps of detectives. And then was developed a plague of detectives, much to the distress of citizens who had the misfortune to be eligible for jury duty. More than fifty per cent of the citizens of San Francisco had their private lives scrutinized by spies during the progress of the Graft Prosecution. Hardly to be compensated were some of them, even though the good Mr. Phelan and the good Mr. Spreckels had really accomplished the regeneration and purification of the community. These spies that infested San Francisco were typical of their class. Partisans for hire, they were to be alienated for hire. On each side were unfaithful spies, and thus the secrets of both sides became more or less common property. Detective Burns, who had been doing a good deal of boasting about his success in acquainting himself with the private affairs of the enemy, learned one day to his consternation of treachery in his own camp. Quickly a conference of the prosecution forces was held, and a

grand coup was resolved upon, the boldest, perhaps, of all the high-handed ventures of the regenerators. They resolved to get access under color of juridical authority to all the private papers of the United Railroad officials. By way of pretext Detective Burns swore to complaints charging the elusive "John Doe" with grand larceny, and on these complaints he asked for general warrants by virtue of which search might be made anywhere and everywhere. Presumably, of course, he believed that some of his papers had been stolen. Detective Burns has a fine facility for expedient belief. What the enemy had, of course, were copies of some of the reports of Burns's detectives, just as Burns had copies of reports made by the opposition hawkshaws.

General warrants, such as Detective Burns asked for, are believed to have been taboo on American soil ever since that memorable, eventful period, immediately preceding the revolt against the rule of George III. They are not easily obtainable in an American city. But San Francisco, it must be kept in mind, was experiencing a curious, mixed character of government in the days of Rudolph Spreckels's ascendancy. Almost anything Spreckels wanted he could have for the asking. What power his agents were vested with may be judged from the circumstance that Judge Lawlor issued a large number of blank warrants, signed and

sealed, *lettres de cachet*, for the arrest of any private citizen. These were given to Detective Burns. Why then should Burns have had any difficulty in obtaining mere search warrants? Wanting them, he went to Magistrate Deasy, son of one of Heney's obedient grand jurors, formerly a deputy in District Attorney's Langdon's office, and the warrants were immediately forthcoming. Then followed a raid on the offices of the United Railroads Company. This stratagem was planned for a late hour in the afternoon, when the courts were adjourned, that no writ of injunction might be obtained. But the officers of the company got wind of the project, went in quest of a judge, found one and obtained a writ. But, of little use in those days were the processes of the court, save when they were invoked for the purposes of the regenerators.

When the police and flock of private detectives arrived with the warrants they were served with the writ of injunction, and they ignored it. Finding the vaults of the company locked, they demanded that they be opened, and threatened that otherwise the vaults would be blown open. So the vaults were opened, and all the books and private papers found there were examined by the detectives. In the midst of the search a paper was found the sight of which impelled one of Burns's detectives to utter an exclamation of astonishment. It also induced him to blurt out

a bit of information most disquieting to his employers. In the presence of several newspaper reporters and lawyers this detective, Ray C. Schindler, exclaimed: "Why that's a copy of my own report on Arthur. No wonder you challenged him! He's the most prejudiced man against Calhoun I ever saw." Now the man to whom this detective alluded was James L. Arthur, a building contractor, who had been twice in the jury box—once in the Ruef case and once in the Calhoun case. In both instances, while he was under examination as to his qualifications to serve as a juror, the prosecution had in its possession the report of Detective Schindler containing these words: "Arthur is the most prejudiced man I have interviewed as yet, and if he were chosen as a juror would hang out for conviction till doomsday." Yet Francis J. Heney was willing, nay eager, to have this man sworn as a juror. Francis J. Heney, as the record shows, heard him asked this question: "Have you any prejudice against the defendant of any kind." And Francis J. Heney heard him reply, "None whatever." And Francis J. Heney sat silent. He heard Arthur challenged for cause, and resisted the challenge. In the Ruef case when the challenge was resisted the attorney for the defendant called Heney to the witness stand, and asked him if he did not have a report regarding Arthur's state of mind. He declined to answer. Every question that was asked him he declined to answer,

and the judge on the bench, William P. Lawlor, upheld him and forced the defendant to exercise one of his peremptory challenges. In the Calhoun case it was again necessary for the defense to exercise a peremptory challenge in order to get rid of Arthur.

This specimen of unfairness on the part of the graft prosecution in the impanelment of juries is but one of many. But all the others are not susceptible of such clear presentation. Of this Arthur infamy, the record, with brevity and compactness, speaks for itself. There are some things that the record discloses only vaguely; others, not at all. For example it does not appear from the record that special venires were summoned by a deputy sheriff of the court's own choosing, or that the judge on the bench was himself a partisan of the Graft Prosecution. The fact is that all the graft cases were assigned to two judges—William P. Lawlor and Frank H. Dunne—who were the club cronies of the regenerators; who espoused their cause off the bench; who were involved in their intrigues, sharing in their glory when their star was in the ascendant, and complaining of public ingratitude in the hour of their downfall. It is not exaggeration to say that by reason of the attitude of these judges it was a very difficult matter to prevent the juries being packed against the defendants.

V

GRAFTERS AND PROSECUTORS

*When Facts Don't Square with Theory then Comes
Progressive Testimony under the
Immunity Lash*

Most of the irregularities of the Graft Prosecution are rightly to be ascribed to the circumstance that facts did not square with presumptions. Abraham Ruef did not handle his business as the regenerators supposed. Nor were the supervisors precisely the kind of grafters they were believed to be. But the eagerness of the regenerators to reach their end being in proportion to their impatience of every stubborn fact that belied what they believed and what they wished everybody else to believe, they stuck to the course which they had charted, through all the channels of sophistry, striving to command success after they had ceased to deserve it. It was thus they came to flounder in a sea of difficulties, thus they made history which to this hour is much misunderstood, its whole import, meaning and value perversely deciphered.

First we find the regenerators striving to vindicate the immunity bath by picturing the supervisors as tragic victims of temptation. Now the

supervisors were nothing of the kind. Their meanest graft they practiced without even the knowledge of Ruef, who, discussing them after his arrest, described them as so greedy that "they would eat the paint off a house." According to the pro-prosecution press they were poor ignorant men whose virtue was intact till it was assailed by the plutocrats of the public service corporations. The other side of the picture was unveiled as soon as the graft cases came to trial. Then it was learned that the supervisors, before their official seats were warm, were grafting with tradesmen from whom they purchased supplies for the city.

On Ruef's preliminary examination Supervisor James Gallagher, chief witness for the prosecution, "go-between" for Ruef, gave testimony with reference to a speech made by Supervisor Bixton as spokesman for his confreres at a luncheon given by some prominent business men who wanted what is known as the Parkside franchise. He quoted Bixton thus: "Well you people are not in this business for your health, and we are not in business for our health." Gallagher swore also that up to that time no illegitimate proposal had ever been made by a corporation.

From what one may learn from the voluminous transcripts of the testimony given at the several trials, it may be seriously questioned whether Ruef was guilty of statutory crimes because of his dealings with corporation officials and public

servants. The men who hired Ruef as an attorney with the expectation of obtaining his political influence may not be regarded as civic idealists, but it was possible for them to take advantage of Ruef's influence without committing any infraction of the penal code. And it is but just to say that in some instances Ruef's influence was unsolicited; furthermore, as there is testimony to show, the ignoring of Ruef might have been productive of very serious consequences to persons having business relations with the city. As to some of the defendants the worst to be said against them is that they obeyed the command of the buccaneers—they walked the plank.

The civic condition of San Francisco at this time, familiar as it was to the citizens, requires a brief exposition for the understanding of the general reader. Every department of the municipal government was under the absolute domination of Abraham Ruef. Mayor Schmitz, a man of courteous manner and pleasing personality, had publicly announced his undying debt of gratitude to Ruef, and had freely intimated that any one who sought recognition or favor from his administration must do so through Ruef. The board of public works, the police commission, the fire department, and every other board and commission, were filled with men owning and professing no allegiance to anything or anybody but Ruef. The members of the board of super-

visors were but a brigand band, organized for plunder under the sub-leadership of Gallagher, himself a member of the board and an attorney at law, but taking orders absolute from Ruef. Thus, while the board of supervisors, through their various committees, might do a little looting and plundering upon their own account, in a petty larcenist sort of way, in their regular campaigns of brigandage they took orders from Ruef, and never dreamed of violating them. The civic condition of San Francisco, then, under the Ruef-Schmitz regime, was this: no citizen could look for justice, much less for privilege or favor, except through Ruef. Ruef did not pretend to limit his activities to public or *quasi-public* corporations. No "fee" was too small to be fish for his net. If a property owner desired to build, with his plans and specifications carefully prepared in conformity to all the existing ordinances, it was necessary for him to obtain a permit so to build from the board of public works. His plans and specifications being absolutely regular, the granting of the permit, it would be thought, would follow as a matter of course. But in practice it never followed. The property owner danced attendance upon one session after another of the board of public works, only to find that whatever other business was reached and transacted by the board, his matter never came up. If after long delay the light did not break in upon

his mind it would be illuminated for him. Some one would say to him: "Why don't you employ Ruef?" Acting upon the suggestion he would go to Ruef, formally engage him as his "attorney" to present his application to the board of public works, pay him the fee demanded, and at the next meeting of the board the building permit would be granted. This condition of affairs existed—not in exceptional cases—but in all cases. The ramifications of this system extended through all the body politic. Men who yielded to this subtle form of extortion did not know, did not care, whether Ruef shared his "fees" with his municipal boards and commissions or not. They only knew that if they did not employ Ruef they could not secure their simple rights, while if they did employ him those rights were promptly accorded them. It may be that they should have stood firm. It may be that they should steadfastly have refused to yield to this form of extortion. So, too, it may be that the innocent traveler should refuse to yield his pocketbook to the highwayman with a pistol at his head. But we are here carried to the border of an ethical domain which it is not my present purpose to enter. The fact is, that if the citizens who so yielded and paid "fees" to Ruef under these circumstances were guilty of any *legal* offense, then it is within the bounds of truth to say that five thousand worthy citizens of San Francisco, men and women, could and should have been indicted.

The Parkside franchise case is both typical and notorious. A number of business men of San Francisco had purchased a tract of land within the corporate limits of the city, but outlying, suburban, and unimproved. It was a part of the sand-dunes of the city. They planned to grade, level, and generally improve it, when, with street car communication, which did not then exist, it was thought that the land would become readily salable, to the pecuniary advantage of the owners and to the great benefit of the municipality. As a part of this plan of development street car service to the property was essential, and the owners of this property sought a franchise for the construction of such a street car line. Bear in mind, they were not in the street railway business, and did not desire or purpose to engage in that business. All that they wished was that the board of supervisors should, as the charter required, advertise the sale of such a franchise at public auction. So far from desiring to own and operate the franchise themselves, they made public announcement that upon the sale of the franchise to any person or corporation, they would pay the sum of one hundred thousand dollars as a bonus to aid in the construction of the road. Mayor Schmitz had announced himself as favoring the franchise. Everybody favored the granting of the franchise. But it was the old story. The supervisors would not refuse to advertise such a franchise for sale. They

simply failed to act. Finally, notice was brought home to Mr. G. H. Umbesen, who was in managerial control of the Parkside lands, that if it was desired that this franchise should be advertised for sale, he would better employ Ruef. Acting upon this suggestion he saw Ruef for the purpose, and employed him as attorney to present the matter to the board of supervisors. Ruef declared that the Parkside people would make a million dollars from the sale of the lands, and demanded an exorbitant fee for taking this "legal" employment. He was finally paid the sum of thirty thousand dollars in cash. By no word of testimony, either of the Parkside people, who told their story freely before the grand jury, or of Ruef himself, is there the slightest understanding, or intimation of an understanding, that any of this money was to be used for the purpose of bribing supervisors. It was a part of the condition which universally existed, that the supervisors and other boards would act at Ruef's suggestion, and only at his suggestion. What he did with the money—whether he was to use it to "feed his dogs," or to satiate his "paint eaters"—no citizen knew or cared. But upon this showing, and upon this evidence, Umbesen and others of his associates were indicted, and an effort was made by Mr. Heney to indict William H. Crocker, touching whose connection with the affair there existed not one word of evidence, and who, in fact, had no knowledge whatsoever

of Ruef's employment or the payment of money to him. These indictments against Umbsen and his associates were in due time, after they had served their purpose of besmirching the indicted business men, dismissed on motion of the prosecution itself, for "lack of evidence."

So we see that if Ruef had accepted money for the express purpose of bribery, and committed bribery in the usual way, smooth would have been the path of the patriots to their darling consummation. But Ruef was circumspect in his roguery. A shrewd lawyer, he was sensible of the hazards of his business. His relations with the higher-ups were ostensibly those of attorney and client. It was important to him that he should put himself in the power neither of the men from whom he was receiving money, nor of the men to whom he was giving it. Out of his sense of caution he dealt only with one supervisor—James Gallagher. Always he acted the part of a lawyer, receiving money as a fee and giving some of it away not as a bribe but out of his generosity inspired by a sense of gratitude.

Now it may be said that it is idle to consider a rogue's metaphysical distinctions contrived for self-exculpation. But I am not at all concerned about the exculpation of Ruef or any of the other defendants in the graft cases. I am trying to do nothing but illumine the conduct of their prosecutors, the men who abhorred the sins of the grafters, and this cannot be done unless the

shifts and stratagems to which they were put by the exigencies that arose be made clear. If we are prepared to admit that in all the circumstances of the matter the prosecutors were justified in dealing with the defendants as though they were vermin, law or no law, and that a beneficent purpose precluded the possibility of wrongdoing, then these essays must be accepted as nothing more than academic exercises. But whatever the viewpoint the fact is that it was not all plain sailing for the regenerators. The first thing that gave them pause was a remark made by Ruef before the grand jury when he was voluntarily reciting the sordid story of his political career. Questioned about his relations with the gas company, he said: "I received a fee for attorney's services of \$1,000 a month for two or three months prior to that, and then finding it, as I explained, necessary to request or suggest an additional fee which I thought would be covered by the payment of twenty thousand dollars, I suggested that to Mr. Drum. I wish to say also in justice to him that I never told him it was to be paid to these men." This testimony was not satisfactory to the special prosecutor, who thereupon asked another question, eliciting more than he bargained for. Thus: "That isn't the way of doing that kind of business, is it?" Ruef made reply: "I don't know what the way of doing that kind of business is except so far as it has concerned myself. I never told any living being

that I was receiving or accepting money on any proposition to be given supervisors, except Mr. Gallagher."

Here was testimony that tended to exculpate the higher-ups in a lump. It came from the lips of the chief witness for the prosecution. His sincerity at this time was unquestioned. He was interested in nobody's welfare but his own. The testimony was not volunteered. It was elicited by the special prosecutor, who was quick to appreciate the importance of it to the defense. Taken down by an official stenographer, it became a public record. The law provides that testimony taken before the grand jury might, at the option of the district attorney, be taken down by a stenographer and if so taken down a transcript must be given on demand to every person indicted as a result of such testimony. The very just purpose of the law is to apprise a defendant of the nature of the evidence he will be called upon to combat. Now, it is a matter of some significance that after Ruef had given his testimony with reference to his customary way of doing business the services of the stenographer were dispensed with. No record was made of Ruef's testimony in the trolley cases. This is well to bear in mind for the light it may throw on a question to be discussed in a chapter to follow, the question being whether Ruef was expected to adapt his testimony to the exigencies of a case.

In addition to Ruef's attitude of aloofness toward the supervisors there is another circumstance that increased the difficulties of the prosecution. It is this,—the supervisors were Ruef's servile creatures, indebted to him for their election, possessed of a lively sense of political favors to come, and they would have done almost anything at his bidding without pay and without promise. The truth appears to be that at odd intervals he gave them money much in the same spirit as a man would throw a bone to a dog. This is not a matter of conjecture. It is borne out by the testimony given by the supervisors at a time when they were earning their immunity, not for the purpose of assisting the defense or injuring the prosecution. Take for example the testimony of Supervisor Wilson. At the trial of Tirey L. Ford, one of the officials of the United Railroads, Wilson said, "I voted on everything because Ruef asked me, and I would have voted for anything and everything irrespective of money simply because Ruef asked me to."

This same witness at the trial of Louis Glass of the Pacific States Telegraph and Telephone Company was asked, "When did you first accept money for your vote?" He replied: "I never sold my vote. I accepted money but I would have voted for these matters anyway." On this occasion as on all others the witness was testifying for the prosecution. His testimony is not singular. It is corroborated even by Gallagher

who worked harder than any of his confreres to earn immunity. On Ruef's second trial Gallagher gave this testimony: "There would be very few matters that I would not have voted for upon the mere request of Ruef."

The first serious mistake of the Graft Prosecution was in granting immunity in the manner in which it was granted. The consideration which moved the grafters to confess was that they should not be prosecuted. But the prosecutors reserved the right to determine what sort of confession the grafters should make. In other words to earn their liberty the grafters had to give the right kind of testimony. This of course is not exactly in accordance with the principle of leniency universally recognized by courts of justice. As a matter of fact it is legally within the discretion of nobody but the judge on the bench to determine whether an accomplice is deserving of mercy by reason of service rendered to the State. But the graft prosecutors administered justice in their own way. They kept the corrupt supervisors out of the jurisdiction of the court by withholding indictments. But the threat of indictment hovered continually over the heads of the supervisors, and the effect was most salutary from the standpoint of the men before whose power they cringed. The so-called contract of immunity, then, was merely a promise of immunity; a bribe it was called by the unregenerate. Not a generous view to take of it,

but one that seems to be justified by the records. For the truth is that to earn their immunity the supervisors had to do some tall swearing; and to adapt their testimony to a radical change in the theory of the prosecution in the trolley cases, they were obliged to improve their memory with the flight of time: no trivial achievement in itself. So if we analyze the testimony of the supervisors we shall find that they appear to have added perjury to their other crimes. That they testified in fear and apprehension is evident enough from the records. Supervisor Wilson failed to give the right kind of testimony at the first Ford trial, and he was indicted, not for perjury but for the bribery that had been condoned. Later at the Calhoun trial, when he amended his testimony satisfactorily, he admitted under cross-examination that he entertained the hope that the indictments would be dismissed. And they were dismissed. Supervisor Coffey, whose testimony fell short of the necessities of the prosecution, had the same experience as Wilson. Supervisor Nicholas said at the Calhoun trial in response to a question by defendant's counsel, "It is my understanding that if the prosecution thinks I am not telling the truth my immunity will be withdrawn and I will be prosecuted." Other supervisors testified in the same vein.

Now for several reasons it was no easy matter for the supervisors to testify according to con-

tract, one of the reasons being as we have seen that the presumptions didn't square with the facts; another being that the prosecution changed its theory of the trolley cases. Originally the railroad officials were indicted for having bribed the supervisors. The indictments charged the payment of a bribe on May 14, 1906, at which time the ordinance granting the trolley franchise was pending. Tirey L. Ford was tried three times under these indictments. On the first trial the testimony showed that no money was received by the supervisors until two months after the final passage of the ordinance. So the prosecution was obliged to make a change of front. As the mere payment of money subsequent to the pendency of a measure does not constitute any crime, it became necessary for the prosecution to prove the offer of a bribe before the final passage of the ordinance. But Tirey Ford was tried three times under the defective indictments. Once the jury disagreed and twice the defendant was found not guilty. Then came new indictments as substitutes for the original, charging the *offer* of a bribe on May 14. Meanwhile a great volume of testimony had been given, and it abounded in contradictions and conflicting statements. And all the while Judge Lawlor was kept busy squaring the law with the facts. We find him changing his instructions three times with respect to the time in which the jury must find the offer to have

been made. In overruling demurrers to the original indictments he said it was plain to be seen "that the pleader had intended to charge an offer with respect to a matter then pending." On the first Ford trial he instructed the jury that before they could find the defendant guilty they must find that the offer was made to the particular supervisor in question "on the matter of the bill then pending." On the second Ford trial the supervisor in question, Supervisor Wilson, couldn't remember just when Ruef's agent, Gallagher, had first spoken to him. So Judge Lawlor instructed the jury that it wasn't necessary to show that the matter was actually pending at the time the offer was made. Then came Patrick Calhoun's trial under one of the amended indictments, and Judge Lawlor instructed the jury that it was immaterial whether they believed that an offer had been made prior to the introduction of the ordinance or during its pendency.

Now let us examine the progressive testimony of the supervisors so far as it relates to the question of the "advance offers" of a bribe. First comes James Gallagher, the "go-between" and principal witness for the prosecution. His first story was told on March 16, 1907, at the Gladstone apartments and reduced to writing. It is known as the Gladstone statement. Describing the method of doing business he said, "The plan simply was to speak to *some member* of the board

and tell him to send the rumor among the boys that there was likely to be a certain amount in this thing, and then when the matter would come up it would be passed." Questioned about the trolley matter he said he told Supervisor Wilson about it, Wilson being second in command, and he added, "I think it was Wilson who talked with *some* of the boys about it and told me he thought they would be satisfied with \$4,000." Two days later before the grand jury Gallagher made his official confession, and on that occasion he said: "It was not customary for me to go around to each member. . . . Generally I spoke to Wilson about it, and it would then become known to the other members." Questioned about the trolley permit he said he spoke to one or two members about it. "I think," he said, "Mr. Wilson was one of them." At the first Ford trial he said, "I think I spoke to several of the members about it." At the second Ford trial he remembered speaking to Sanderson, Phillips, Coleman and Davis. At the third Ford trial he added Boxtton and Furey. Four months later, at Ruef's second trial, he made this admission: "I did not say to them that there was any amount in it, or anything of that sort. I just asked them as to the proposition as to whether they would be favorable. My recollection is that they all said "yes."

Up to this time the "offers" which became the sole basis of the case for the prosecution were

presented as subjects of loose, casual and informal talks. But when Calhoun was prosecuted under the new indictments the conversations became more specific. In addition to the supervisors thus far mentioned, Gallagher remembered conversations with Nicholas, Coffey, Harrigan and Lonergan. He remembered that he told them, about a week before the ordinance was passed to print, that there was \$4,000 in it for each of them. He even recollected where each separate conversation had taken place.

Similarly progressive was the testimony of Supervisor Nicholas. Called as a witness in the Glass trial July 23, 1907, he was questioned about the trolley franchise, and said he was quite sure that Gallagher never told him there was to be any money in it. His best recollection was that "it was a kind of impression noised around in the board" that money would be paid. At the Calhoun trial two years later he remembered that Gallagher told him "there would be \$4,000 in the matter."

Supervisor Wilson, the second in command, the man who obtained the sentiment of the supervisors for Gallagher, testified on several occasions that all his confreres were in favor of the trolley permit and that he spoke to none of them of money. "I saw quite a number of them," he said at the first Ford trial, "enough to know that it would go through, but *I did not speak about money to them*; and I found that the senti-

ment was the same as to the trolley matter as it was to almost everything, that is, to let the people get in and get at business. . . . Hundreds of carmen told me that they wanted to get the cars going to get to work, that they were tired of loafing, and the merchants all wanted it and the people wanted it."

At the second Ruef trial Gallagher testified, "I am satisfied that Ruef could have got a majority to vote for the trolley ordinance without any money." This sentiment he repeated at the first Ford trial in these words: "I think the trolley franchise would have been passed without a dollar from anybody." On several occasions this same witness swore that his confreres at first wanted more money than Ruef was willing to allow. At the second Ruef trial he said, "When Ruef first spoke to me about the trolley matter I said, 'Well I don't know whether the boys would want to do that or not.'" He added: "I took steps to round them up, and reported back to Ruef, and I remembered that there were some members who thought they should receive a large sum, that they thought it would be a pretty difficult thing to put through."

Now from the testimony of Gallagher's confreres, who were as eager as Gallagher himself to earn immunity, it would seem that he was nearer the truth when he said that a majority would have voted for it without any money. Let us consult the record. Supervisor Mc-

Gushin testified at the Calhoun trial thus: "I was not bribed in the trolley matter because I had *no previous understanding* on any matter and never voted with a mercenary motive." Supervisor Phillips gave this testimony: "I don't think that I heard there was \$4,000 in it before the vote, and I don't think I heard any rumor. I told Gallagher I would vote with the Administration, and I always did vote with Gallagher." Next came Supervisor Mamlock: "I regarded Gallagher as the leader and followed him. If he said 'No franchise' I would have voted against it, and if he said 'Franchise' I would have voted for it. I favored the trolley and would have voted for it without money." Supervisors Coleman and Davis swore they would have voted for it without money. Supervisors Furey, Sander-son, Coffey and Walsh swore that nobody ever told them money was to be paid for the franchise. Here we have a preponderance of testimony, supplied by the prosecution itself, in flat contradiction of the amended testimony of Supervisor Gallagher and in corroboration of the testimony given by Gallagher when it was not deemed necessary to establish proof of the "advance offers." Furthermore this is testimony that tends to prove that Ruef rewarded the supervisors as he saw fit and not because he had to. In morals the distinction is without difference, but in law the difference is immeasurable.

Is there any reason for supposing that the

supervisors who contradicted Gallagher were actuated by the desire to assist the defendant? We shall see that what they were able to appreciate as the exigencies of the case they strove to conserve.

Francis J. Heney in his opening statement to the jury in the first Ford trial said he would prove that the supervisors were paid in two installments; that he would trace the money from the U. S. Mint to which it had been wired from the East to Calhoun's order, to Ruef, and thence to the supervisors. He would prove that the first payment made to Ford "was composed largely of one and two dollar bills, together with five and ten and twenty dollar bills, twenty dollars being about the largest bill there was in the package; these bills being bills that had been sent into the Relief Corporation largely by mail in small amounts—many of them being one and two dollar bills." He also purposed proving that the second payment was "in large size bills of not less than fifty and probably not less than one hundred dollars apiece." He had no difficulty in proving that the railroad officials received the money from the mint in installments such as he described. Of that there was no denial. All the banks having been destroyed by fire, in the emergency all banking business was handled at the mint. There was no secrecy about this business. It was easy to establish the facts, but to prove that the money paid on a certain occasion

passed into the hands of the supervisors was another matter. In truth the prosecution had picked up the wrong trail, and precisely for that reason there was much contradictory testimony.

Supervisor Boxton testified at the first trial that the payments were made just as Heney said they were made. But before the grand jury he had testified that there were no bills "as small as a dollar or two dollars." Supervisor Davis, before the grand jury, was asked if one of the payments was in small bills, principally one and two dollar bills. He made this answer, "I don't think any of mine were that way, no." At the first Ford trial he said of the first payment, "If I recollect rightly the size of the bills were small denominations, ones, twos, fives, twenties." At subsequent trials he introduced the "tens" thus bearing out Mr. Heney to the letter. Supervisor Harrigan testified before the grand jury thus: "The size of the bills in the first payment were mostly five, fifty, twenty, and ten, fifty and one hundred. They ran that way in all those payments." Mark the change at the first Ford trial when speaking of the first payment: "I think they were from one to twenty dollars; think there were two, and fives and tens in first payments." Supervisor Kelly on the witness stand in the first Ford trial testified that the bills in the first payment ranged from \$10 to \$100 and added, "There were no ones and

twos." He more nearly approximated the Heney version at subsequent trials, introducing fives and keeping the maximum at twenty. Supervisor Lonergan had the most difficult task of all the supervisors in trying to approximate the Heney version. Before the grand jury when he didn't know what Heney wanted to prove he swore that both payments were in bills of denominations ranging from \$20 to \$500. At the first Ford trial he said the first payment was in bills of small denominations, chiefly twenties, tens and fives, and that there were some one dollar bills. Supervisor Mamlock testified at the first Ford trial that the first payment was in five, twenty and one hundred dollar bills. He repeated this testimony at the second Ford trial, but at the third he professed not to remember the denominations in either payment. According to Supervisor Nicholas at the first Ford trial, the first payment was in five and ten dollar bills. He was positive there were no twos. At the third Ford trial he recalled that there were some two dollar bills and also that there was exactly one one dollar bill. At the Calhoun trial he remembered that (just as Heney said) there were also some twenty dollar bills in the first payment. Supervisor Walsh remembered at the first Ford trial that the bills in the first payment were "mostly large." But at the second trial he remembered they were small. Unfortunately he remembered at this trial that the bills of the second payment were

also of small denominations. At the next trial he made no effort to improve his testimony, but of the second payment he said, "It was in an envelope and I could not say what denominations as I didn't count them." Supervisor Wilson's testimony at the Gladstone apartments was that both payments were in small bills, but in court he made his testimony accord exactly with what Mr. Heney declared that he would prove.

From the foregoing excerpts it certainly appears that some pretty tall swearing was done in the interest of civic purity under the auspices of men possessed of a superfetation of civic virtue

VI

RUEF PLEADS GUILTY AND WHY

*Experience of the Former Boss in the Hands of the
Regenerators; He Bargains for Immunity,
but Refuses to Give the Right Kind of
Testimony and Is Forsworn*

If we except the ridding of public office temporarily of grafters, the one triumph of the Graft Prosecution was the putting of Abraham Ruef behind the bars of a penitentiary. But as grafters have come and gone from all time, and will continue to come and go while we wait the halcyon Millennium, and as the main object of the regenerators was to teach bribe-givers the salutary lesson that it is more hazardous to set the snare than to take the bait, the conviction of Ruef was an achievement that afforded his prosecutors much less glory than might ordinarily have been expected. As a matter of fact the conviction of Ruef afforded the regenerators nothing but humiliation. There are triumphs that mortify the victor, and this was one of them. A time there was when all California cherished the hope that San Quentin was Ruef's destination; but by the time he reached the penitentiary there had been wrought a great change in public sentiment. For the

kind of justice administered to Abraham Ruef was a sorry simulacrum of the Anglo-Saxon justice guaranteed to every American citizen. If beyond the borders of Russia, in the history of modern times subsequent to the days of religious persecution, there is to be found an instance of the perversion of civic authority approximating that which Abraham Ruef experienced in San Francisco, it is recorded in annals that have escaped my attention.

Ruef's experience in the hands of the regenerators was marked by a series of ugly scandals for which the most ingenious would find it difficult to devise palliation. His treatment from the beginning was unusual. When arrested in the Spring of 1907 he was not ordered into the custody of the sheriff or the chief of police, but into the custody of Elisor W. J. Biggy, who converted a private residence into a jail for the accommodation of his prisoner. Here Ruef was guarded by men who never permitted him the enjoyment of solitude for a moment; nor, for a time, did they permit him to have any visitors. Day and night, for many weeks, his guards subjected him to the torture of the "third degree." At brief intervals they roused him out of his sleep, and told him of things which they pretended to have heard him say while dreaming. Nearly every day he was visited by Detective Burns, who, to obtain a confession, cajoled and threatened, but in vain. In the course of time

Ruef's health was undermined, and then he was put on trial before Judge F. H. Dunne under an indictment charging him with the extortion of money from the proprietors of what are known as the French restaurants.

These restaurants, it should be explained, are peculiar to San Francisco. They are spoken of as restaurants euphemistically. They cater chiefly to persons who chafe at the conventional restraints of polite society, for whom are provided special accommodations and facilities. Puritanical persons regarded these restaurants as evidence of the looseness of the city's morals. One day the police commissioners threatened to cancel the license by virtue of which the restaurants were conducted. The proprietors employed Ruef as their attorney. And Ruef dissuaded the commissioners from their avowed purpose. Now it was believed that Ruef inspired the threat which induced his employment; in other words that he had blackmailed the restaurant keepers. This was the belief of the regenerators even at the time that Rudolph Spreckels told James Gallagher that the public service corporations were his objective point and that he was willing to give Ruef immunity. The public were told that the evidence of Ruef's guilt was as plain as a pikestaff. There was no escape for him, according to the regenerators, and this opinion they promulgated for public consumption. Still, as was learned in the course

of events, they would be delighted to have him plead guilty.

While the jury was being impaneled for Ruef's trial the defendant was prevailed upon to cooperate with the prosecution. And one day, much to the astonishment of everybody, apparently even to the astonishment of the prosecution, he rose in court and pleaded guilty to the charge. The prisoner made a pathetic speech, saying among other things, which was the most curious of all of them, that whilst he pleaded guilty he was innocent of the crime charged. Strong men shed tears, special counsel for the Graft Prosecution shook the prisoner's hand with impressive earnestness and warmth, sympathizing with him in what they professed to regard as his repentant mood. The Bulletin, voicing the sentiments of the regenerators and suggestionizing the public as usual, felicitated Ruef on his fine exhibition of Christian manliness. At the same time the people were reminded of the purifying power of repentance, and were told that the prisoner had been persuaded by his conscience to make reparation for his misdeeds by assisting the prosecution in their glorious work of civic reform. What all the while was going on behind the scenes a few were able to conjecture, but the public were kept in ignorance for many months. That they had accepted as an emotional drama what was in reality a well-rehearsed farce the general had not the slightest

suspicion. Ruef's performance on that occasion had been prearranged by the regenerators for theatric effect. For that occasion the temple of justice was converted into a playhouse. Even the solemn judge on the bench was not unconscious of the precise nature of the part he was playing. Incredible to be sure, but none the less true. The regenerators were really proud of that coup. Read the American Magazine for April, 1908, and you will find Detective Burns boasting of the consummate artistry of it all, and his Boswell, (the panegyrist of all the regenerators) Mr. Lincoln Steffens, paying him the tribute of his admiration. You will not learn from Mr. Steffens, however, the why and wherefore of the humbuggery. He does not expound the purposes of the regenerators, though he does go so far as to divulge the fact that Ruef had a contract for immunity and was to be given immunity "if he would tell the truth." All of which should be borne in mind, for Steffens was the official mouthpiece of the prosecution.

When Ruef pleaded guilty there was no reason, so far as anybody could see, why he should not be sentenced on the spot. Ordinarily the man that pleads guilty is in a hurry to be sentenced. The sooner he is sentenced, the sooner he serves his term and gains his liberty. But Ruef, it is important we should note, was not sentenced. The plea of guilty was entered in May, 1907. The summer waxed and waned, and Ruef's fate

was still a matter of conjecture. At brief intervals he appeared in court for no other purpose than to hear Judge Dunne postpone his sentence, and for a long time he acquiesced in these postponements as though he quite understood the situation and was satisfied. Meantime he appeared before the grand jury, and gave much testimony with which the regenerators seemed to be much pleased. He and the regenerators were now on the most amicable terms. Presently he appeared as a witness for the prosecution on the trial of his old friend Eugene Schmitz. And of course the man who had shortly before made the whole town weep was an impressive witness; especially so as the immunity contract was under lock and key. On Ruef's testimony Schmitz was convicted. He was sentenced, too, but he took an appeal.

And still the suspending of Ruef's sentence went on from week to week. And people wondered why. It was surmised of course that Ruef had exacted some measure of leniency from the prosecution, but not for a moment did that unsophisticated and credulous person, the average citizen, entertain the notion that Ruef was not to be punished at all. Yet what more natural than the question, If he is to be punished why not punish him? Certainly if he was to be punished it would be advantageous to the prosecution to inflict the punishment, since, then, his testimony would not be weakened by the suspicion that it had been purchased with immunity.

Presently the truth was unlocked and permitted to flutter into the light of day. The key was supplied by the appellate court, which rendered a decision in the Schmitz case to the effect that the indictment was fatally defective. This decision, which will be discussed in another chapter, had the effect of lightning. It clarified the atmosphere. The Schmitz indictment was the same as the Ruef indictment, the one to which Ruef had pleaded guilty. His plea of guilty was therefore of no avail to the prosecution, since the indictment was fatally defective. The sentence that had been postponed for seven months need be postponed no longer. Presently out came the story of all that occurred before the plea of guilty. It came out in a series of affidavits bristling with ugly accusations against the regenerators. The principal affidavit was Ruef's. It was corroborated by the affidavits of two clergymen, rabbis of the synagogue, the Rev. J. Nieto and the Rev. B. M. Kaplan. And what these gentlemen were unable to corroborate there was much circumstantial evidence to support.

From these affidavits it appears that after subjecting Ruef to the "third degree" for a period of six or seven weeks, the regenerators solicited the aid of the two clergymen. Failing to break the prisoner down by any of the expedients commonly practiced by the police, they appealed to the rabbis to urge him in behalf of his mother

and sisters, who, Ruef well knew, were suffering great mental anguish. According to these clergymen it was represented to them that Ruef could render a great public service by making certain disclosures; that if he would do so he would be set free, whereas if he refused he would be sent to the penitentiary for life. The clergymen knowing the great distress of Ruef's aged parents, for their sake agreed to urge Ruef to confess. "It was evident to me," says Dr. Kaplan in his affidavit, "that every member of his family was deeply attached to the defendant, and that they were all on the verge of collapse. I considered that it would be an act of divine mercy to them if the defendant even at a sacrifice to himself brought them some peace of mind and comfort. I told this to the defendant, and I also assured him that we would all assist in re-establishing him in public estimation should he assist in the moral regeneration of the city by making the disclosures as requested."

In the first interview with Ruef the clergymen failed to move him. Ruef was adamant. They reported that it was useless to urge him further. Then, Dr. Kaplan tells us, he was asked to try again. Rudolph Spreckels and Francis J. Heney begged him in the interest of the community to plead for a confession. "We were authorized," says Rabbi Kaplan, "to say to Mr. Ruef that Mr. Schmitz, the mayor of San Francisco, had offered to tell all he knew of these

matters and to 'throw down' Mr. Ruef, but the offer had been rejected, and that all the public service corporations were also ready to make a scape-goat of him,* but that they preferred to prosecute the men connected with the public service corporations, as they considered them the fountain heads of municipal corruption, rather than Mr. Ruef to whom they were willing to grant complete immunity; that Ruef was a man of great ability, had many friends and would soon and easily restore himself to public confidence, and they said that neither they nor any one connected with the prosecution had any animosity or hard feeling against Mr. Ruef, and at that time as well as on many other occasions Mr. Heney stated in my presence that he personally liked and admired Mr. Ruef."

Finally, when told that his mother was sick unto death, Ruef agreed to accept immunity. The first demand made upon him was that he should plead guilty in the French restaurant case which was then on trial. It was explained that he would be permitted at some future time to withdraw the plea, and that the case would then be dismissed. The plan as outlined was to give him a written contract of immunity on all charges save the one upon which he was being tried, and as to that charge to give him a verbal guarantee that it would be dismissed. This is what is sworn to by Ruef and the two clergy-

* Neither Schmitz nor the officials of the public service corporations ever asked for immunity.

men, and to their testimony there are circumstances that give verisimilitude.

This was a curious plan, by no means intelligible at first blush. What reason was there for two separate agreements? From the lucid explanation given by Ruef and his friends it appears there was a cogent reason. And the explanation considered in connection with facts, about which there is no dispute, is not at all implausible. The explanation is that it was foreseen that as a witness Ruef would be asked if he was not testifying because he had been promised immunity. Then would the immunity contract be the best evidence, and the inference from it would be that there was punishment in store for Ruef. Besides Schmitz was to be tried for extortion, and if Ruef pleaded guilty the presumption naturally would be that Schmitz was guilty too; for in the French restaurant cases they were said to be co-conspirators.

But Ruef stoutly objected to pleading guilty. He insisted that he was innocent of the charge; that the restaurant keepers had not been blackmailed, and that he could prove his innocence. He was told he must plead guilty and on no other condition would he be granted immunity. At length he wavered, expressing doubt, however, as to whether the district attorney would be able to carry out the proposed agreement. It was sought to dissipate his scepticism with assurances the soundness of which subsequent

events vindicated. Ruef tells us of these assurances: "It was stated to me by said Burns, by said Heney, and by said Langdon in the presence of said Dr. Kaplan, and by said Burns to me in the presence of Dr. Nieto that Judge Dunne and Judge Lawlor were in sympathy and agreement with the prosecution and that they would co-operate with the prosecution, and also that the presiding judge of the Superior Court had agreed to assign all indictments in these 'graft cases,' including all indictments returned or to be returned against myself, only to the two departments of the Superior Court presided over by said Judges Dunne and Lawlor."

Despite these assurances Ruef was sceptical. He desired assurances from the judges themselves that the compact would be kept. Then were arrangements made for what has since been known as "the midnight meeting." The story of this memorable meeting is told by the clergymen. On the night of April 27, 1907, they accompanied Heney and Burns to the Temple Israel where court was held temporarily after the fire of 1906. First they entered Judge Lawlor's chambers. The judge was on hand. What occurred Dr. Kaplan relates:—

"Mr. Heney said to the judge in effect, 'We may have to ask you in regard to certain cases which will come up in your court to—' And about that time Judge Lawlor interrupted Mr. Heney and said in effect, 'I do not wish to go

into particulars. I have confidence in the district attorney's office, and so long as I have confidence in the district attorney's office it has been the practice of this court to act favorably on any recommendations or requests made by the district attorney's office in open court.' "

This was as far as Judge Lawlor would go. His language as quoted is somewhat equivocal, but Judge Lawlor is instinctively cautious on all occasions. He spoke, and then he left the room. The affiant goes on: "Thereupon Dr. Nieto and myself, not being familiar with the practice of courts and not being attorneys, asked Mr. Heney whether we were to understand from the statement of the judge just made that he had given the assurances desired, namely, that any case against Mr. Ruef which might be assigned to his department should upon motion of the district attorney be dismissed. To which Mr. Heney replied, 'Certainly.' "

Judge Dunne received the detective the representative of the district attorney and the two clergymen in his chambers between the midnight hour and one o'clock in the morning. Judge Dunne is not so discreet nor so prudent a man as Judge Lawlor. He was not averse to committing himself outright in the presence of the clergymen. He did not perceive the advisability of interrupting Mr. Heney or leaving the door open for equivocation. Says Dr. Kaplan:

"Mr. Heney said in effect to Judge Dunne, 'We

are negotiating with Mr. Ruef to 'come through' and we want him to plead guilty to the charge now on trial before you. We may ask you to allow him to withdraw that plea and to substitute the plea of 'Not Guilty' and dismiss the indictment against him.' To which Judge Dunne substantially replied as follows: 'I have every confidence in the district attorney's office and will do what you ask.' Thereupon I asked Judge Dunne whether I was to understand that if Mr. Ruef pleaded 'Guilty' that he would permit and consent to the plea being withdrawn and the plea of 'Not Guilty' substituted and the indictment dismissed, to which he answered, 'Yes, sir; yes, sir; certainly.' After that, as the judge was about to leave the room, I again asked him, in effect: 'Your honor, do you mean to say you would allow the plea to be withdrawn and dismiss the case?' To which the judge responded, 'Yes, yes; certainly,' and took his departure."

The clergymen reported to Ruef all that had occurred at the midnight meeting. The terms of the prosecution were then accepted. On this occasion District Attorney Langdon was present, and this gentleman, we learn from Dr. Kaplan's affidavit, said to Ruef: "It is understood that we did not discuss with you the matter of the withdrawal of the plea of guilty; you can rely on the reverend gentlemen." On the same occasion, Dr. Kaplan tells us, Mr. Heney explained that as a matter of policy Ruef would be expected "to

keep secret all arrangements," which he did, and pleaded guilty after rehearsal.

On May 20, 1907, Ruef was summoned before the grand jury, and he told the whole sordid story of his relations with the supervisors and with the public service corporations. At the close of the session he was thanked by Heney who appeared to be well satisfied with his testimony. Months passed without anything occurring to give indication of a breach between the prosecution and the star witness. Yet perfect harmony had not been maintained. When Schmitz was on trial, Ruef, as he tells us in his affidavit, informed the district attorney that he would not make a good witness against the defendant. "I told them," he says, "that as no extortion had been committed I should be obliged so to testify, and that if I made a truthful statement of all the facts cross-examination would demonstrate that no extortion whatever had been committed by either Schmitz or myself."

He adds that the prosecution tried to persuade him to change his testimony. Detective Burns told him he was not keeping his contract, and threatened him with prosecution. But the next day Burns submitted to him a typewritten set of questions which had been prepared by Heney, and demanded that he should write his answers thereto. Ruef did so. Subsequently he was told by Burns in the presence of Dr. Kaplan that his answers were satisfactory, and that he would

be called to the witness stand. "I told Burns," says Ruef, that I did not believe my answers and proposed testimony, even as so written, would do the prosecution any good, because while true, it would open the doors for a full cross-examination by defendant's counsel, when all the facts would come out, and that the larger part of the same would be extremely favorable to Schmitz. Burns said to me in the presence of Dr. Kaplan that the prosecution would take its chances on that and would take care of the cross-examination, and that Mr. Heney did guarantee that nothing would be allowed to be brought out on cross-examination unfavorable to the prosecution."

At this same interview Burns warned Ruef against giving any testimony about the immunity contract. "I told Mr. Burns in the presence of Dr. Kaplan," says Ruef, "that I could not deny that agreement if properly questioned, but that the best thing to do in the matter would be to allow me to withdraw my plea and have the case dismissed before I went upon the stand as a witness in the case. This, Mr. Burns said, the prosecution could not do as it would affect the result in the Schmitz case. I then asked Mr. Burns how, upon a proper cross-examination, he or the prosecution could expect to keep from the jury the facts relative to said agreement to withdraw my plea; he stated to me that the prosecution would attend to that

and I need give myself no concern about it. I said to Mr. Burns in effect as follows: 'Judge Dunne knows all about this agreement and about the withdrawal of my plea. How could I refrain from disclosing it?' He said that Mr. Heney would take care of that, and that I need not worry about it; he and Heney would guarantee that it would not be brought out."

Just before going on the witness stand Ruef was again admonished by Burns in the presence of Dr. Kaplan to say nothing about the immunity contract, and if necessary to deny that any agreement existed with reference to the plea in the extortion case. "I told him," said Ruef, "that even if I were willing to do as requested, which I was not, that I would be a fool to do so from the standpoint of my own interests, as I would thereby be effectually debarred thereafter from ever insisting that such an agreement had been made."

Fortunately there was no necessity for perjury. Heney had made no idle boast to Burns. The cross-examination was most discreetly restricted. Ruef tells about it thus: "When direct questions were asked by the attorneys for the defendant to which a categorical answer could not be avoided, which categorical answer would have disclosed material truths regarding the facts of the case and also would have disclosed said agreements of immunity and the said agreement to withdraw the plea, the said Heney objected

to said questions, and his objections were by said court, Judge Dunne presiding, sustained."

All of which may seem improbable. Here we have a very grave accusation against a minister of justice, one whom the public of San Francisco greatly admired for the inflexible integrity he was believed to have exhibited throughout the Graft Prosecution. Implicated with him in this ugly accusation are the civic patriots who were given *carte-blanche* to regenerate and redeem a city. But is it true that they stifled inquiry? For answer let us consult the transcript on appeal in the case of the People vs. Eugene Schmitz. Let us look to the record and see whether the judge on the bench, who had been made a party to the secret immunity contract, suppressed the truth and vindicated the guarantee given to Ruef "that Mr. Heney would take care of that." From the transcript it appears that on direct examination Ruef was asked whether he had paid Schmitz any of the money received from the French restaurant keepers. He said that he had. Asked whether he told Schmitz that the money was his share, he answered: "I didn't say to him it was his share. I did say to him that I had received from the French restaurants \$5,000, and that if he would accept half of it I should be glad to give it to him. Thereupon I gave it to him." On cross-examination he admitted that the prosecutors had promised to "secure leniency" for him; also

that he had told them that "some particulars" of his testimony would be favorable to the defendant.

"Well, what particulars of your testimony did you refer to then?" was the question put by counsel for the defendant, one of the firm of Metson, Campbell & Drew. Heney objected, and the objection was sustained.

The next question: "Did you at any conversation with these gentlemen tell them that you would not stand for anything save and except complete immunity?"

Again came an objection from Heney, and Judge Dunne sustained the objection, saying: "You keep asking him the same question. You are using equivalent (?) language. It is the same tone, the same purpose. I have no objection to your asking him if he is going to receive immunity, and let it go at that, but you are asking him the same thing in different forms, every question."

After some questioning about other matters the important query was put in this form: "Now I will ask you, Mr. Ruef, if you are not now giving your testimony under the expectation and hope of immunity, complete immunity?"

Heney objected, and Judge Dunne sustained the objection.

It also appears from the transcript that Ruef admitted on cross-examination that when he pleaded guilty to the charge of extortion, he said:

"I am not guilty of the offense charged in this indictment." But when he was asked if that statement was true, Heney objected and the objection was sustained.

So we see it was indeed a most restricted cross-examination that was permitted when Ruef was on the witness stand. Yet Ruef had been called to rebut testimony given by Schmitz under cross-examination. And in that cross-examination Heney was allowed exceptional latitude. Schmitz, called in his own behalf, was questioned on only two points; about a conversation with a French restaurant keeper, and about a conversation with a police commissioner. Then Heney was allowed to take him in hand, and conduct a thorough inquiry into all his relations with Ruef. This I advert to merely to indicate the attitude of the court, not to throw any light on the question of guilt or innocence, though, in passing, it is pertinent to remark that Ruef's relations with Schmitz were in a measure akin to those of Ruef and the supervisors. There is no evidence anywhere tending to show that Schmitz was ever a party to any bargain made by Ruef with any person who had business dealings with the municipal government.

Perhaps it is also pertinent to add that not a scintilla of testimony is to be found implicating Schmitz in the trolley franchise deal, while on the other hand it is admitted that one of the

most valuable things obtained from the municipality under the Schmitz regime was a railroad franchise, which was granted in consideration of nothing but Schmitz's friendship for J. Downey Harvey, an intimate friend of both Rudolph Spreckels and James D. Phelan. This franchise which cost Harvey and his associates nothing, Harvey publicly declared to be worth five million dollars. So Schmitz was not so sordid as he might have been. On the contrary he was a grafter of generous impulses. It is known that he was on the point of putting through the Parkside franchise without cost to anybody when the supervisors balked and necessitated the employment of Ruef.

Let us revert again to the Ruef affidavit. We learn from it that after giving his testimony in the Schmitz case Ruef was complimented by Heney, Burns and Langdon. They were pleased with his testimony and assured him they would carry out their agreement. Three months—July, August and September—passed by, and Ruef was growing impatient. Detention was irksome. He longed to be free as air and independent as the wind. In his sequestered corner there was too much madding uncertainty. He urged his keepers to allow him to withdraw his plea and have done with it. "They told me," says Ruef, "that they feared it would hurt their case if it should become known by the withdrawal of said plea that I was to go unpunished,

until they had secured the conviction of some of the other persons against whom indictments had been returned."

Dr. Kaplan reminded the regenerators that it had been agreed to permit Ruef to withdraw the plea immediately after the close of the Schmitz case. But Langdon could not remember that any definite time had been agreed upon. And all the while Judge Dunne was vindicating the good faith of the prosecutors by postponing sentence from week to week. Surely Ruef ought to be satisfied that immunity eventually would come to him, since it was clear that if Judge Dunne did not intend to keep his promise he would pass sentence and thus silence the vagrant rumors in circulation that the fallen boss had made certain of his own freedom before confessing.

Meanwhile the newspaper critics of the Graft Prosecution were making the situation uncomfortable for the regenerators by complaining that Ruef was being unduly pampered at public expense. Why should he be kept in a luxurious residence? they asked. They complained that the manner of his detention was costly, and argued that he ought to be sent either to the penitentiary or to the county jail. All the while the expenses of his imprisonment were being paid under court orders issued by Judge Dunne.

The prosecutors, squirming under the lash of criticism, told Ruef in September, 1907, that

he would have to go to jail unless he agreed to pay his own expenses. Assured that the period of his detention would not exceed six weeks, he decided to let the burden shift from the taxpayers to himself. The first trial of Tirey L. Ford was then in progress. Ruef expected to be called as a witness. One day he was visited by Dr. Kaplan who told him that the prosecution wished him to strengthen the testimony which he had given before the grand jury. He told Dr. Kaplan that he had been spoken to on the subject by Burns, who, he said, evidently wished him to commit perjury. While they were talking Burns made his appearance. Addressing Ruef the detective said: "I am getting hell. We are not satisfied with your testimony in this matter. You've got to make it stronger against Ford and Calhoun. You are holding back. If you don't testify to convict Ford and help us to convict him and Calhoun you can't expect favors from us. I wash my hands of the immunity contract. I won't be intermediary any longer."

Ruef's reply, according to his affidavit, was in these words: "I could not and would not live with a consciousness and knowledge that a false oath and perjured testimony from me had convicted any man. I would not give such testimony if ten thousand years of imprisonment stared me in the face." Knowing Ruef as a man of faint scruple this utterance comes to us with

a theatric ring. It is like the self-approration of a man who has made a fine figure of himself in his own imagination. Yet there may be something of sincerity in this self-conscious verdict.

In this connection it may be worth while to indulge in speculative reflection touching the character of the leading villain of the graft drama. Ruef abounds in obliquities of character. Educated, vain, capable of the most generous acts, yet meanness seems to cling to his every motion. Far from harmonious is his moral and intellectual nature. The lust of avarice seized on him early in his career, begetting more vices than Priam did children. In his quest of fees he became a pettifogger at the bar, developing a skill in sharp practice; yet he gained a reputation for benevolence, and in politics he plumed himself on his reputation for square dealing with men. What man has not some redeeming quality? No man is spotted all over with iniquity. The brutalest barbarian has something spiritual in his nature. Now is it incredible that there was a limit to Ruef's capacity for evil? Are we to doubt there was a single crime at which his calloused sensibilities revolted? He tells us that he refused to adapt his testimony to the exigencies of the case against the higher-ups; and if you examine all the circumstances, even apart from the testimony that Rudolph Spreckels's "objective point was the public service corporations," you will find it hard to avoid the conclusion that

Abraham Ruef is today a convict not because he sinned against the law but because he would not perjure himself that others might be sent to the penitentiary. Assuredly it is not to be gainsaid that it was in his power to make impossible the acquittal of several men under indictment. He need only have sworn that the money he received was given to him to be given to public officials as a bribe. There was but a slight difference between the language of the testimony he gave and the language of the testimony demanded, but that difference he would not efface. Whether he might have obtained his liberty by giving the testimony demanded is another question. Promises are like pie crust. Even written contracts may be broken as we learn from Ruef's experience, for he was prosecuted on one of the charges covered by the black and white instrument of immunity.

If to believe all that Ruef has said about his bargain were tantamount to resolving a question of veracity in his favor and against the regenerators, his affidavit would hardly be entitled to serious consideration. But this affidavit has received corroboration from many sources. One of them is the American Magazine of April, 1908, wherein Lincoln Steffens quotes Burns on the occasion of Ruef's arrest: "You can see that we have got you and got you right. And you can see also that you aren't the man we're after. The fellow we're after is your good friend,

the man higher up." In addition to Ruef's affidavit we have the undisputed fact that Rudolph Spreckels told Gallagher that Ruef was privileged to exchange his testimony for complete immunity; also the undisputed fact that several supervisors conveyed to him the assurance of complete immunity on the same basis on which they had obtained it; also the testimony of two rabbis, the strange and significant conduct of Judge Dunne in the Schmitz case, the repeated postponement of Ruef's sentence, and finally the written contract of immunity which is a matter of public record. This contract itself seems to argue the truth of what Ruef says in his affidavit. It sets forth that its terms should be applicable to all indictments save No. 305, the one to which Ruef agreed to plead guilty, the one which, according to his affidavit, was the subject of the verbal agreement ratified at the midnight meeting. So it appears that if in deference to the wishes of the regenerators we accept the written immunity contract as the only evidence of a bargain, we must believe that Ruef agreed to do what the regenerators wanted him to do in consideration of their promise to punish him for only one felony. Is it reasonable to believe that Ruef would agree to such terms? It would be if it were the practice in such cases to prosecute a man for more than one crime. Such is not the practice. Justice is not vindictive. Justice is usually satisfied with one verdict. Even in the case of

Abraham Ruef justice, as we now know, would have been satisfied, for Ruef having been convicted of one crime the prosecution of him is at an end. Is it not, then, putting a tax on credulity to ask us to believe that Ruef accepted immunity on all but one charge when there was not the slightest likelihood of his being prosecuted on more than one charge?

Whatever else may be said of Abraham Ruef it will never be asserted that he was not inclined to drive a hard-and-fast bargain. Nor will it be said that the regenerators regarded him as of so little importance as a witness that they would not be likely to let him dictate terms. What they thought of him is set forth on pages 28 and 29 of the printed report of Mayor Taylor's whitewash committee. "It became apparent," says that committee with reference to Ruef, "that without this one man's testimony the many bribe-givers whose enrichment by the large profits of such undertakings made them equally, if not more, dangerous to society, would not only escape the penalty which was their due, but that even their names would not be discovered and written in the 'detinue book' of the city's suspicious characters. Besides, without Ruef's assistance, the conviction of Schmitz, with the resultant change in the mayoralty, the police and other municipal boards, seemed impossible." So Ruef was deemed a very important personage when the immunity contract was made, so important, ac-

According to the apologists of the whitewash committee, that they would not, as they tell us, "have regarded it as an error to grant Ruef complete immunity." But they do not believe he was promised complete immunity. They do not believe that it had been privately agreed to let Ruef withdraw his plea of "guilty" and plead "not guilty." They do not believe it because "neither rabbi protested when Ruef led the jury to believe that the agreement was not for complete immunity." As we have seen, Judge Dunne would not permit Ruef to answer the question as to whether he had been promised complete immunity, a circumstance in itself of some significance. If Ruef had not been granted complete immunity what was the objection to his saying so? And even though the court had shown a disposition to have the whole truth discovered is it likely that a rabbi or any other person would have had the courage to stand up in court and interrupt the trial? In the circumstances the silence of the rabbis is hardly to be taken as conclusive of the falsity of the Ruef affidavit. And therefore the argument of the whitewash committee cannot be accepted as a refutation of Ruef's statement.

Circumstantial evidence is very much in Ruef's favor. And this evidence is strengthened by Dr. Kaplan who corroborates Ruef on many important points. For example we learn from Dr. Kaplan that Heney, Langdon and Burns before

discovering the weakness of their case told him they were satisfied with the testimony given by Ruef before the grand jury and that not till after the first Ford trial did they express a different view of the matter. In the midst of the Ford trial the prosecution decided not to call Ruef as a witness, though they had summoned him to court. Heney's failure to call Ruef is explained by Dr. Kaplan: "Mr. Heney told me he had his reasons for not calling Mr. Ruef, and that he would put him on in the Calhoun case which was shortly to be tried. He said, in substance, Mr. Ruef is no fool, and that he would say all that was expected of him in the Calhoun case. At that time Mr. Heney said that Ruef was withholding some testimony, and asked me to get Mr. Ruef to furnish the testimony referred to."

This is corroborative of Ruef who says that Dr. Kaplan told him what the prosecution wanted. "I stated to Dr. Kaplan repeatedly," says Ruef, "that to do what was requested meant perjury on my part."

Dr. Nieto, according to Ruef, also had interviews with the prosecutors, and reported to the prisoner that they had said to him he must give the testimony wanted or take the consequences." But the clergymen were always assured that as the testimony wanted was the truth, they should have no hesitancy in advising Ruef to "come through."

There were other matters besides the trolley

franchise about which the prosecutors desired satisfactory testimony. In the most important of these matters Mr. Theodore Roosevelt was personally interested. Says Ruef: "Among the matters so requested to be testified to and urged upon me by said Burns for and on behalf of said prosecution were matters which related to William F. Herrin and E. H. Harriman of the Southern Pacific Company, and especially was it desired and requested that I should testify concerning these last named persons that they had entered into a corrupt bargain and agreement with me relative to, and had paid money to me for and concerning, the nomination of James N. Gillett as candidate for Governor of the State of California by the Republican State Convention which was held in Santa Cruz in the year 1906. And they claimed that said Herrin, Harriman and said governor had committed crimes against the laws of the State thereby, for which they could be indicted, and it was stated to me by said Burns that the said prosecution had positive information and knowledge that said William F. Herrin had paid me a large sum of money to purchase the votes of delegates representing San Francisco in said Republican State Convention, and wanted me so to testify, and stated that the prosecution wanted to 'get' the governor and Herrin and Harriman."

Ruef says he denied ever having been paid money for any such purpose, and that Burns

then told him that Heney and Spreckels were anxious to incriminate Herrin and Harriman and "that Heney had the support of President Theodore Roosevelt in that connection."

Notwithstanding his denial Ruef was summoned before the grand jury and questioned about the nomination of Governor Gillett, and he swore that not a dollar had been promised or paid to him by Harriman or anyone else for the purpose of influencing the vote of any delegate. The only testimony ever adduced anywhere on the subject of this alleged bribery of delegates to the convention was that given by Ruef before the grand jury, and though he disclaimed knowledge of the use of money by anybody in that connection, it was stated in the final report of the grand jury that evidence had been obtained of the bribery of the convention in the interest of the man who was nominated for governor. Yet no indictments were filed, and nobody ever heard anything more of the matter. The supposition is that the report was prepared under the direction of Langdon and Heney.

* * * * *

In the month of January, 1908, Ruef learned that his immunity contract was not worth the paper it was written on. It was canceled, the verbal agreements were repudiated. On no single hypothesis are we to account for the be-

haviour of the prosecutors in this matter. They were not all of one mind. As late as January 13 District Attorney Langdon stood ready to carry out his agreement. He told Ruef that while he was not satisfied with his testimony on the subject of the trolley franchise nevertheless he had decided to accept what had been given. Dr. Kaplan tells us that as late as the eighteenth of January he had a number of interviews with Langdon and Burns, during all of which they assured him the contract would be kept. Furthermore they told him they were "working with Judge Dunne and Judge Lawlor to induce them to comply with the terms of the agreement." Also they told him that "Rudolph Spreckels would see Judge Dunne in order to induce him to live up to the terms of the agreement, and that Mr. Fremont Older, editor of the Bulletin, was in consultation with Judge Dunne with the view of inducing him to carry out his agreement." Apparently Judge Dunne and Judge Lawlor were the recalcitrants. As it was still possible to shock public opinion by setting Ruef free, the judges were timid. Besides the silent changes of time had operated on the relations between the regenerators and the people. For more than a year the Graft Prosecution had been dragging its slow length along, and nothing had been accomplished. What was worse, the regenerators were no longer regarded as too seraphic for human criticism. The sus-

picion that they were not as scrupulous as they ought to be was striking deep into the public conscience. So much was known of what had been done in secret; so many glimpses had been had of dissimulation and chicane, that the situation was far from propitious for the consummation most passionately hoped for by Abraham Ruef. No wonder that the judges who had sanctified the "midnight deal" were obdurate.

For nearly a week Ruef was on tenter-hooks. Twice he was brought to court with the understanding that the motion to dismiss would be made. Each time he suffered bitter disappointment. The judges, he was told, had not been persuaded. Meanwhile, as Ruef says, Detective Burns was trying to induce him to commit perjury in an affidavit for the benefit of Editor Older who was being prosecuted for libel by William Tevis. One day Burns said to Dr. Kaplan, "We expect Ruef to do something for Older in consideration of what Older is doing for him." The affidavit which they wished him to sign reflected discredit on Tevis. They expected Ruef to swear that Tevis had hired him to sell a water plant to the city. Ruef refused to sign, and Burns vituperated him for his ingratitude to Older.

On the evening of January 18 District Attorney Langdon called on Ruef and told him the judges refused to stand by the agreement. In that interview Langdon said: "I would regret

this more if we were all satisfied that you have not been withholding some of the truth. We have come to the conclusion that you must be flirting with the other side."

When the immunity contract and the repudiation of it became the subject of public discussion the regenerators denied that they had ever promised Ruef complete immunity. Affidavits of great bulk were made by Heney and Burns in which they gave their version of the immunity bargain. To believe them is to believe that the clergymen wandered far from the truth, but only in matters of collateral interest. The attorney and detective enveloped the issue in a cloud of words. They dwelt chiefly on Ruef's trickery and their own shrewdness. Clearly their main purpose was to convince the public that negotiations were opened by Ruef and that they never had any confidence in him. They always feared that he intended to trick them, and they asserted that he had not been honest in his dealings with them. Nevertheless the "midnight meeting" was held. Heney said it was held merely to have the judges explain their usual policy in regard to dismissing cases against defendants who had "turned State's evidence" and as to their confidence in the affiant and Langdon. But why Ruef should want the judges to explain something with which he was as familiar as they were themselves does not appear. Burns admitted in his affidavit that he authorized Wilson

and Gallagher to call on Ruef and tell him that "he could have the same opportunity of coming through which had been given them." But, according to Burns, he acted without Heney's authority. Heney would never agree to anything but that Ruef should be promised *leniency* in the French restaurant case. So after all there is but a slight difference between Ruef's version and the version of the prosecution. For the prosecutors admit that all cases save the French restaurant cases were to be dismissed and that even as to that case Ruef was to be vouchsafed "leniency."

When it was pointed out that Ruef was morally entitled to immunity under the written contract, the Supreme Court having decided that the indictment in the French restaurant case to which he pleaded guilty and with reference to which the verbal agreement had been made, was invalid, they said that it was the understanding that he would suffer imprisonment on one charge. Of course the regenerators tried to exculpate the judges, but circumstances seem to justify the conclusion that the judges were alone responsible for the cancellation of the contract. District Attorney Langdon gave color to this theory when he issued a statement for publication to the effect that he had kept all the terms of the contract. He did not say that Ruef had violated the contract. So the inference was that the third party to the contract—the court—

had made it impossible to carry out its provisions. Let the truth be what it may there was no more talk of immunity for Ruef. He had to go to trial.

VII

THE SCHMITZ CASE

*A Trial in Which the Law Was Adapted to the
Purposes of the Regenerators Without Regard
to Elemental Principles or the Constitu-
tional Rights of the Defendant*

A study of the Graft Prosecution would be incomplete without a review of the Schmitz case; nay, no history of American jurisprudence will ever be complete which does not contain the story of this case—the story of the trial with its exhibition of the complete and abject surrender of a criminal court by its judge into the hands of “special prosecutors”; the story of the appeal where every weapon of vilification, defamation, and incitement to lynch law, was brought to bear upon the appellate courts in the effort to break them down and make them as pliant and subservient to the will of the Graft Prosecution as the trial court had proved itself to be.

The story then has two chapters. That to which we first come presents a humiliating, unrelieved picture of the swift and utter degradation to which a court of record can reduce itself by willing subservience to any man or set of men.

Schmitz and Ruef, as we have seen, had been

indicted jointly for extorting money from the French restaurateurs of San Francisco. The indictments were the first ones found. They were handed out as a pabulum to a hungry public which was growing tired waiting for something to happen. Ruef had never denied, indeed he had for years openly admitted, that he had been employed to represent certain restaurateurs as attorney at law in securing their retail liquor licenses. The flimsiness of the evidence upon which these indictments were brought is amazing in the light of after events. It was charged that the two men conspired to extort money. Ruef's evidence at the time the indictments were brought was not open or known to the prosecution. Without that evidence there is not the shadow of testimony showing Schmitz guilty of any offense, and even with Ruef's evidence the proof, as will appear, must be regarded as wholly unsatisfactory.

Ruef, it will be remembered, was put upon trial under this joint indictment, and having secretly arranged with the prosecution for immunity, pleaded guilty, coupling his plea with the astounding statement that he pleaded guilty though innocent.

The indictments against Schmitz were allowed to slumber until the exigencies of Graft Prosecution politics demanded Schmitz's elimination from the mayoralty. As mayor he still controlled a most important municipal office and its

patronage. He had agreed to resign, leaving the nomination of his successor to a committee of the recognized civic bodies of San Francisco, but when that committee, headed by Judge Charles Slack, submitted this proposition to Rudolph Spreckels, the members were driven from his sanctuary with scorn and contumely, denounced as emissaries of the infamous Southern Pacific, and informed that Mr. Spreckels would name his own mayor. Mayor Schmitz must, therefore, be excised. Under the law of California the mere conviction of a criminal offense—regardless of the fact whether or not the conviction be upheld on appeal—works a forfeiture of office. Aware of this the way of the prosecution was plain, and by a considerate judge could be made easy. All that was necessary was to convict Schmitz, and to this end, and not to determine his guilt or innocence, the trial was begun. The conclusion was foregone before a word of evidence was taken; indeed, before the jury was impaneled. During the slow process of jury getting an astute member of the pugilistic fraternity leaned over and whispered to a companion—"Let's get out of here. Dis aint on the level. Dey aint going to give Schmitz a dead man's chance." Nor did they. Incredible as it may read, the matter and the fact are simply these: whatever the prosecution desired it obtained, regardless of the protests and objections of the defense; of what the

defense desired, it obtained nothing if there was the slightest objection by the prosecution. It is nevertheless conceivable, you may say, that the prosecution was always right and the defense always wrong. The answer to this may well be left to the Court of Appeals which was later called upon to review these performances, (for they can scarcely be called rulings) which will be dwelt upon presently. For the present it is enough to say that the judicial ermine was as spotless after that trial as before. It was all black. When the foreordained verdict was announced nobody was surprised, and but a few were shocked. Not that every lawyer and most laymen did not know that the trial had been either a judicial farce or a judicial tragedy, depending on one's point of view. But at that time everything was given for nothing and taken for granted so far as the prosecution was concerned. It was recognized that the elimination of Schmitz was a matter of expediency. The manner of his elimination was of no consequence, since the end must justify the means. As to what might occur on appeal, nobody cared. The conviction was the thing and it had done its work. Schmitz by force of it went out of office. That this is an unvarnished recital of the facts the records will show. Let us glance at them. The charge was that defendants Schmitz and Ruef feloniously "threatened the said Joseph Malfanti, Charles Kelb, and William

Lafrenz, that unless they should then and there pay to them the said sum of money hereinbefore referred to, and promise and agree to pay one year thereafter a further sum of one thousand dollars the said Malfanti, Kelb and Lafrenz could not and would not obtain said license for the sale of said liquors and wines from the said City and County of San Francisco, and the said Schmitz and Ruef would prevent the said Malfanti, Kelb and Lafrenz from carrying on or conducting the said business of selling said wines and liquors." Here there is a charge of extortion by threat, the particular threat being explicitly set forth.

Early in the trial and previous to the taking of evidence the judge had removed any possible doubt as to his attitude. A juror by the name of Harris after having been accepted by prosecution and defense and sworn to try the case, was afterwards successfully challenged without cause by the district attorney. The code of California, like the law of New York from which it is drawn, permits a challenge to a sworn juror to be made only when good cause to excuse the delay is shown. Says the Court of Appeal of New York (*People v. Hughes*, 137 N. Y. 29): "The obvious meaning of the section is that a challenge for good cause, which is required to be taken before the juror is sworn, may nevertheless be taken thereafter and before evidence is given, in the discretion of the court.

If it does not mean that it must necessarily mean that the court may for any good reason, even though undisclosed, set aside a sworn juror in its discretion. I do not think that is its meaning or its purpose." The California decisions are to the same purport. Yet the judge *without any cause shown* or reason assigned, permitted the prosecution to interpose a challenge and excuse Harris.

Another juror, Bray, had likewise been sworn. His examination was reopened. A newspaper had asserted that his wife was a fourth or fifth cousin of Schmitz's wife. Interrogated, the juror replied that he knew nothing of it and had heard nothing of it. Nobody else knew anything or proved anything. A challenge by the prosecution to the juror on the ground that he was related to the defendant by consanguinity or affinity within the prohibited fourth degree, was allowed by the judge with the solemn statement, "I think any relationship, no matter how remote, ought to keep a person off the jury." Says the Court of Appeals: "The evidence did not show any relationship of the juror to the defendant to any degree or in any way."

Upon *ex parte* affidavits from the prosecuting attorneys the court found the sheriff and coroner disqualified, and appointed Biggy an elisor to take charge of the jury. It refused permission to the defense to read and rebut the affidavits; refused permission to file affidavits showing the

disqualification of Biggy and his bias and hostility to defendant. It found the sheriff and coroner disqualified on the *ex parte* statements of the prosecution, but refused a man whose liberty was at stake the right to show that his jury was to be put in the hands of his personal enemy. How exact an echo of the prosecution the judge made himself may be shown by two excerpts from the record: "The prosecuting attorney (speaking of the appointment of an *elisor* to counsel for defendant): That is a matter over which neither of us have any control. It is nothing with which we are concerned.

"The court (to defendant's counsel, Mr. John J. Barrett): It is no concern of yours, Mr. Barrett; you have nothing to do with it."

Says the Court of Appeals, after showing what is all-apparent, that this was a most unwarranted deprivation of a defendant's right to be heard in the matter: "Fair dealing and the rights of the defendant required that he should be heard on both propositions." The remark of my pugilistic neighbor thus seems fully justified.

But coming to the evidence and taking it in the light most unfavorable to Schmitz, it showed that the approval of the police commissioners was necessary before the restaurateurs could secure their liquor licenses; that their licenses were refused to the impairment of their business of conducting assignation houses; that they

were advised by their attorney that they could secure their licenses only by employing Ruef to represent them; that Ruef agreed to represent them as their attorney in the matter of the licenses and also in any matter of litigation that might arise in connection with their business, for two years at an annual salary or retainer of \$5000; that they agreed to this and paid the money; that neither Schmitz nor Ruef threatened them in any way; that Ruef promised merely to do what he could for them, and that to one of them Schmitz had said that he favored the issuance of their licenses, and would look into the matter of the delay and see what could be done to remedy it.

Reagan, an ex-police commissioner, appointed and dismissed by Schmitz, testified that the mayor had told him that the French restaurants were evil places and licenses should be denied them. He had never visited, had never heard of the restaurants. He visited and inspected one and found nothing objectionable and voted for its license. Subsequently complaint was made of another (the complaint growing out of the refusal of the proprietor to unionize his waiters) and evidence was brought before the commissioners that lewd women frequented the place. Reagan then voted to refuse it a license. The mayor told him they were all alike and that none should be granted licenses. Thereafter, Reagan admitted, he was resolved to favor the licensing of only such res-

taurants as would comply with the regulations of the board and do away with bedrooms, and he would at any time have voted licenses for any that would comply with these regulations. Afterward, while he was voting against the licenses and they were being withheld, the mayor told him that great pressure was being brought to bear on him by business men and politicians to grant the licenses; that the pressure was so great that he feared it would injure him politically if the refusal were continued, and asked Reagan if he could not change his vote. Reagan said he could not, and the mayor said he could not ask him to stultify himself but would remove Hutton who was with Reagan in opposition. Hutton was removed. Ruef appeared before the board, and suggested new regulations under which licenses could properly be issued. These regulations were adopted, and licenses were issued, but Reagan still voted against them. There was here no evidence that Schmitz or Ruef or Reagan threatened any of the restaurateurs. But it was argued by the prosecution that the threat charged to have been uttered was embraced in and conveyed by the *act* of Reagan in voting against the licenses. Yet the truth is that Reagan voted *against* the licenses to the end and that he testified he would have voted *for* them if the proprietors had been willing to give up their assignation-house business.

With this testimony the prosecution rested its

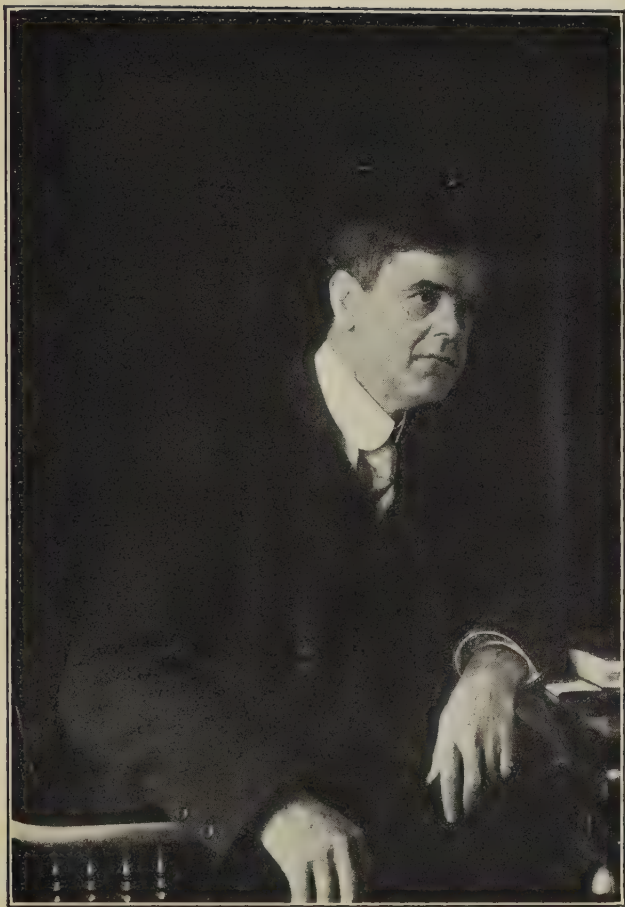
case. There was no word of evidence pointing to a threat, to a conspiracy or to a sharing by Schmitz of the fee Ruef received. Whatever Ruef's testimony would be the prosecution knew, yet he was not called to the witness stand.

When the prosecution rested Schmitz was sworn. His testimony was confined absolutely to denials of certain statements attributed to him by Reagan. In effect he said he had not changed front on the license question; that he had always advocated with Reagan the issuance of licenses except to proved immoral places. This was all his testimony.

By the Constitution and laws of the State of California, as of every State, I believe, no defendant can be compelled to furnish evidence against himself; and if he offers himself as a witness he may be cross-examined only *as to those matters about which he was examined in chief*. Yet when Schmitz was turned over to the prosecution for cross-examination the question he was made to answer, over the objection of his counsel, was: "Did Ruef pay you any part of the \$5000 that has been testified he received from the French restaurants?" Schmitz's whole cross-examination was made up of like interrogatories. It needs no lawyer to perceive that this cross-examination was not upon the matters about which Schmitz was examined in chief. It needs no lawyer to perceive that it was an examination upon outside matters designed to force evi-

dence or denials from a defendant in open and obvious violation of his constitutional rights, an examination countenanced and upheld by the judge in brazen defiance of the Supreme Court which long before had declared: "A defendant accused of crime in this State has a constitutional right to be protected from forced examination. As to any matters concerning which he has not voluntarily testified in his own behalf, *no evidence can be wrung from him.*" (People v. Arighini, 122 Cal. 126.)

Yet is this tale of the prostitution of justice but half told? Schmitz denied the receipt of any money from Ruef, and under the pretense of rebutting this evidence so wrung from Schmitz by illegal cross-examination, Ruef was called and was permitted to testify that after receiving his fee he offered half to Schmitz, who accepted it. And then Ruef was turned over to the defense for cross-examination. Bear in mind that it was suspected then, though publicly denied by the prosecution, and not known till months after, that Ruef had been promised complete immunity by the prosecution and was testifying under that promise; bear in mind that evidence of the existence of such a promise of complete or partial immunity is always permissible to show the strong motives that may actuate a witness to color his testimony; bear in mind that Ruef was a co-defendant with Schmitz and had dramatically pleaded "guilty though in-



FRANK H. DUNNE

The "midnight meeting" judge who presided at the Schmitz trial.

nocent," to the same charge; bear in mind also that judge, as well as prosecutors, knew all these things, and that the judge was a party to the secret "midnight conclave," at which the word of all, judges and prosecutors, was given to the rabbis that Ruef should receive absolute immunity; bear in mind, moreover, that the rules of evidence have always sanctioned the utmost liberality in the cross-examination of a co-conspirator, and that in this connection the Supreme Court had said: "The utmost latitude of cross-examination justified by the law in any case should be extended to the testimony of such a witness," (*People v. Williams*, 18 Cal. 191); and finally bear in mind the illegal latitude allowed in the cross-examination of Schmitz, and then follow the record of Ruef's cross-examination. Ruef stated that he had told the prosecution all the facts and that the larger part of them were favorable to Schmitz. This is the record of interrogations:

"Q. State those facts now in detail."

"Q. Did you in your conversations with these gentlemen (of the prosecution) tell them that you would not stand for anything except complete immunity?"

"Q. In pleading guilty to this charge, you stated at the same time that you were not guilty. Was that true?"

"Q. What do you mean, Mr. Ruef, by that statement that you were not guilty of this charge?"

“Q. Did you change your plea to guilty after you had your conversation with Mr. Burns in which he told you he would do all he could to secure leniency for you?”

“Q. Did you prior to the time you say you gave defendant one-half your fee, have any conversation with him in relation to any division, or giving him any part of any fee which you received from the French restaurant keepers?”

“Q. Did you go to the French restaurant keepers, or did they come to you?”

“Q. Did you tell defendant in any conversation that you had ever threatened any restaurant keeper that if they did not pay you money their licenses would be held up?”

“Q. Now I will ask you this, Mr. Ruef, if you are not now giving your testimony under the expectation of immunity—complete immunity?”

The answers to these and dozens more of equally pertinent inquiries were one and all shut out by the court (and mark the ruling) as “not being proper cross-examination.” And to what end? Plainly the purpose was twofold: first, to prevent disclosures of the bargain which had been entered into between Ruef, the prosecutors and the judge, which bargain would injure them and reduce the weight of Ruef’s evidence; and, second, to exclude from the case any word of evidence which might help the defendant. Jeffries was doubtless an abler judge, but his methods were not superior in blunt directness.

Such then was the trial. Its naked shamelessness is here but half revealed. The case will be found reported in 7 Cal. App. R., page 330, where the court comments on the matters here set forth. Expressed though these comments are in language characteristic of the philosophic calm peculiar to the Bench, the arraignment of the trial judge has a sting that the average indignant layman might strive in vain to inflict. It is well to emphasize this citation and again to direct the reader to *People v. Schmitz*, 7 Cal. App. R. 330, for none of the comments will be found in the decision of the Supreme Court. In the petition for hearing before that court, the prosecution dropped even the pretense of defending its own conduct or that of its judge; it voiced no protest against the rulings and denunciation of the Court of Appeal upon any of these matters; by its silent acquiescence it admitted the truth of the charge almost openly made by the Court of Appeal, that with the aid of a subservient judge the prosecutors had at every point wantonly denied a defendant at the bar of a criminal court in the State of California every right to a fair and impartial trial guaranteed him by the Constitution and statutes of the commonwealth.

Again it is important that these matters should be understood, for they go far to explain why in the campaign of abuse soon to follow both higher courts were deluged with vituperation by the Graft Prosecution press, while the trial

judge was posed, limned and painted as an upright and able jurist, struggling heroically within the law to uphold the people's rights.

* * * * *

Thus was Schmitz convicted and put out of office. He took his appeal. While it was pending Ruef continued to live in charge of the prosecution's elisor and eight guards at the city's expense. Week by week, month by month, as has already appeared, he was brought to the court before whose bar he had pleaded guilty, and on each occasion, without reason shown or suggested, his sentence was postponed. Daily, with ever increasing vociferation, the graft prosecutors declared that they had not promised Ruef immunity, but they vouchsafed no other information to the restive public, and as yet nothing was known of the immunity bargain.

Such was the situation when in January, 1908, the District Court of Appeal rendered its decision reversing the judgment in the Schmitz case. It was received with perfect equanimity by the public because the public knew that a reversal was inevitable. Much more singular is the fact that it was received with equal complaisance by the graft prosecutors and their press, the district attorney expressing doubt as to whether an application would ever be made to the Supreme Court for a reconsideration. Then shortly after the storm broke. The Bulletin invited the mob

to lynch the three judges of the Court of Appeal, and daily published their pictures and residence addresses, as an aid to the incitement; and the Supreme Court was threatened with like appalling calamities if it did not yield to the demand of the prosecution and reverse the Court of Appeal. All this was puzzling and mysterious at the time. Not the abuse of the higher courts; it was well understood that this abuse was designed to bend them by terror and coercion to the prosecutors' will. But why the sudden change of front? Why first acquiescence and then denunciation? If the prosecution were "stung," why so long before the yelp of pain?

An explanation is necessary, and the explanation necessitates reversion to the situation that preceded the breaking of the immunity contract. That situation was one of extreme embarrassment to the regenerators. They did not dare carry out their contract with Ruef. Public sentiment, contrary to their expectations, had not softened toward their impatient penitent. Thumbs were down, mercy was not in the public eye. So Judge Dunne went on postponing Ruef's sentence. He postponed it so often that the Legislature has since deemed it advisable to prevent a recurrence of this particular kind of procrastination. The delaying of the sentence only postponed the evil day. Some time something would have to be done, and already the papers were demanding the reason for the continuances. Ruef, more-

over, was growing importunate and was insisting that all indictments against him should be dismissed and that he should be discharged without sentence from his plea of guilty.

To the troubled prosecutors the decision of the Court of Appeal afforded a happy escape. That decision declared that the Schmitz indictment was radically defective and charged no crime. It being the identical indictment to which Ruef had pleaded guilty, it necessarily followed that it charged no crime against him. All then that the regenerators had to do to rid themselves of their difficulties was to bow to the decision of the Court of Appeal, which meant that they would be freed from the embarrassment of the Ruef plea of guilty. There could be no judgment pronounced in that case. This most perplexing trouble being thus eliminated, it remained only to have the trial judges dismiss the other indictments.

With the arrangement of these matters District Attorney Langdon immediately busied himself, and thus it was that during the first few days he did not believe an application would be made to the Supreme Court, but thought the decision of the Court of Appeal would be accepted as final.

But here an insurmountable difficulty arose from an entirely unexpected quarter. Never as thoroughly broken as his team-mate Judge Lawlor, Judge Dunne suddenly refused to pull at

the crack of the prosecution's whip, or in the language of Mr. Heney, he refused "to come through." With most stubborn recalcitrance he declined to dismiss the indictments against Ruef pending in his court, and thus, again in the language of Mr. Heney, the prosecutors "were in a hole."

Exposure of their secret dealings with Ruef was imminent. The public mind must not be allowed to ponder the pertinent queries of hostile critics calculated to compel disclosure of the real state of affairs. There must be a diversion; public attention must be directed elsewhere. The decision of the Court of Appeal was no longer necessary or needed. What better than to assail the higher courts? The more venomous the accusations the more certain would the regenerators be to direct attention from their embarrassment. And so to the accompaniment of a rain of stink-pots from their press, the prosecutors' petition for rehearing of the Schmitz case was handed to the Supreme Court.

In the petition for rehearing, as has been said, none of the iniquities of the trial was defended, nor was a review asked of any of the Court of Appeal's animadversions upon them. The Supreme Court was asked to consider but two propositions: 1, a motion to dismiss the appeal; 2, the sufficiency of the indictment. As illustrating the willingness of the prosecution to resort to the "detested technicalities of the law" to serve

their own ends, it may be noted that both the Court of Appeal and the Supreme Court decided that the prosecution's objections to giving Schmitz a hearing upon the merits of his appeal were utterly frivolous and untenable.

The Court of Appeal had declared that the indictment was radically defective, and this determination the Supreme Court was asked to review. The determination itself was not, as the prosecution sought to have believed, a shattering bolt from the untroubled blue. All the objections to their indictment had long ago been presented to their consideration, first, by demurrer in the trial court, when it would have been the easiest possible matter to save all question by presenting new indictments by their grand jury which still remained in session, and, second, under writs of habeas corpus sued out by Schmitz and Ruef in the Supreme Court, where every objection to the indictments was fully argued. The Supreme Court did not hold the indictments good, but refused to pass upon the objections to them, saying they were not reviewable under habeas corpus, and could only come before the court on appeal in case of conviction. So the prosecutors were fully advised, and the remedy was ready to their hand; but they preferred to limp along with these defective indictments, doubtless for the reason already given, that originally they cared nothing for them and never expected anything to grow out of them.

The Supreme Court affirmed the decision of the Court of Appeal, extending the citations and elaborating and reasoning of the latter court. Here were two courts comprising ten judges un-animously of one opinion. In any other community than California, and in California at any other time than this, when the Graft Prosecution had it by the throat, the standing, learning and dignity of those ten men would have rendered utterly impossible the recognition of the clangor of a Heney, the threat of a Bulletin, or the scurrility of a Johnson. Nor as it was would their uproar have amounted to anything had they not cunningly appealed to the ignorance and credulity of the multitude, employing for public deception a specious bit of misrepresentation.

If proof was necessary of the danger of the recall, of the importance of safeguarding the people against their susceptibility to the persuasions of the unscrupulous, what occurred in California after the Schmitz decisions would certainly be admissible. Every pro-prosecution organ asserted that the upper courts pronounced the Schmitz indictment defective because it failed to charge something which was a matter of common knowledge—that Schmitz was mayor. How utterly false the statement was will be disclosed to anyone taking the trouble to read the two decisions.

Once before in California a learned and upright justice of the Supreme bench (now an honored

member of the Federal judiciary) in discussing the measure of damages to parents for the death of an infant child, and expounding that these damages were founded on the estimated pecuniary loss to the parents of the services of the minor, declared that in the case of a poor family, the minor children frequently contributed to the family support, while in the case of a wealthy family, the children were frequently a bill of expense. Mere platitudes, I grant you, yet in the heat of an election which soon followed, a hostile newspaper catchily declared that this justice had decided "that the life of a poor man's son was not worth as much as the life of a rich man's son." The story swept the State like wild fire. No denial or explanation by the bar of the State, no proof that the statement charged was the exact opposite of the statement made, had any effect; the lying catch phrase was too happy, and it wrought the justice's defeat.

As absolutely false and nearly as effective was the catch phrase launched against the higher courts after the Schmitz decision. As I have said, a reading of the two opinions will disclose the truth—that neither decision is based upon the absence of any allegation, and that the absence alleged is not even considered. The courts were not discussing what the indictment *did not* contain, but what it *did* contain.

Just what did the courts decide? There is nothing metaphysical or obscure in the decisions

—a running layman can understand them if only he will read them; but not one man in ten thousand who dogmatically discusses and criticises a judicial opinion, ever thinks it worth his while to read it that he may inform himself of what he is talking about. We don't pretend to be great doctors, or engineers, or architects, or generals. But one and all we are great jurists, not in the making, but in perfection. I, at least, have read the decisions. This is what they declare. There is no crime in this State except it be an act denounced by the penal laws. Extortion under force of fear or threat is defined as follows: "Fear such as will constitute extortion may be induced by a threat to do an *unlawful injury* to the property of another." The extortion charged was by threat; but the threat was not to do an unlawful injury to property, since, conceding that a prospective license to sell liquor may be regarded as property, the threat was not to do an *unlawful* injury to that or any other property of the restaurateurs. For anyone may freely go before the commissioners and use his influence to prevent the issuance of a license, and this is done every day. Nor can the evil motive affect the act so as to make it a crime. This has long since been decided in California, where it was said in consonance with a great weight of authority that "the malicious use of lawful means to induce a lawful act does not make the resulting injury unlawful." (Boyson v.

Thorne, 98 Cal. 578). Now it was not charged that unlawful means were used. If it were meant to charge the use of unlawful means they should have been specifically set out; for in the absence of averment the unlawful means could not be assumed. The Court of Appeal uses a simple and illuminating illustration: a man threatens his neighbors that he is going to build a public stable upon his land. The effect will be to injure their property. His motive is evil and malicious. His threat is designed to extort money from them, and they buy the security of their property by paying him the amount he demands to forego his plan. Morally he is an extortionist, legally he has committed no crime. Even the layman may see that if the motive of an act is to determine its criminality the law must first so declare, but it has not yet done so.

This is the substance of the harmonious decisions of the two courts upon the indictment. They contain no strictures upon the failure of the prosecution to charge the official capacity of Schmitz—though why in heaven's name the learned pleaders of the Graft Prosecution should so carefully have refrained from mentioning the fact that he was mayor—must forever remain an unsolved mystery. The court's statement merely is that the indictment fails to charge a threat to do an unlawful injury to property, which threat of unlawful injury or injury by unlawful means is necessary to the indictment.

And now we come to the last episode. In the midst of the roar of machine-made abuse which the prosecution's press continued to utter following the Supreme Court decision, the Sacramento Bee tendered a Grecian invitation to the Chief Justice to write an "explanation" of the decision so that "the man in the street might understand it." Single minded and sincere, not appreciating that the denunciation of his court was fabricated and the misunderstanding designed, the Chief Justice wrote to the Bee a public letter expressing his individual views. It fell, as it was probably meant to fall, upon deaf ears and unheeding minds. But in that letter, for the first time, the Chief Justice pointing out the defects of the indictment and how they could be remedied, said that if it had been charged that Schmitz was mayor, and Ruef a political boss of great influence, and that they threatened to use unlawfully their position and power, the defect would have been cured, but in the absence of such averment judicial notice could not be taken of these matters.

Here for the first time was any color given to the lying statements of the press; not by the court, for its decision had been rendered and had become final; but by a single justice expressing his own views. Of course if the indictment charged unlawful means, it would cure the defect whether the unlawful means were charged against Schmitz as a citizen or as an official.

This, however, was promptly put in the background, and again the cry was raised that the Supreme Court had declared the indictment bad *because* it did not allege that Schmitz was mayor.

Into this melee, at the behest of Heney, rushes the intrepid Professor Wigmore, and with up-raised sword assaults the astonished Chief Justice. This is his slashing stroke: "Courts should take notice of anything that is notorious; if then a man named Schmitz was notoriously mayor of San Francisco and a man named Ruef was notoriously its political boss at the time in question, that is *all that any court needs*." Therefore, all the courts should have taken judicial notice of these facts and thus have cured the defective indictment. Mr. Wigmore is constrained to admit that "there are dozens of other supreme justices who would decide and are deciding just such points in just the same way as the California case," but they are disposed of with a wave of the pen as non-progressive.

I write as a historian and not as a partisan of either side in this memorable strife. But it must occur even to the unthinking that Professor Wigmore's letter is not all-satisfying. While it is easy for a private lawyer to invent desirable changes in the rules of law or evidence, a judge on the bench, under his oath of office, is denied that pleasure and may only construe the rules of evidence laid down for his guidance by the legislature. Although it may be an admirable

innovation in the law of evidence for the courts to take judicial notice of anything notorious, the courts of California can do so only under legislative mandate and not under Professor Wigmore's. The legislature has explicitly described the things and all the things of which the courts of this State may take judicial notice, and "things notorious" are not among them. And perhaps this obedience to the Constitution and their oaths, rather than their dull inertia against the uplift of progressive law not found in the statutes, explains the attitude of the dozens of supreme justices in other States—justices who, while willing to see in Professor Wigmore's closet-made laws the lamp of divine guidance, still feel bound to steer by the rush-light of their constitutional obligations.

Professor Wigmore was not left to battle alone with his windmills. To his aid came James M. Kerr, formerly of an Ohio institution not less important for educational purposes than the one in which Professor Wigmore labors as an instructor. Kerr is now engaged in annotating the codes of California, and by reason of his past experience his knowledge of criminal law is not to be despised. Mr. Kerr, with a delicacy to be expected, put his criticism of the decision in the Penal Code he was annotating. "It is thought," he says, "that the decision violates well recognized rules of statutory construction, and well settled rules of criminal

pleading, and that the case cannot be safely relied on as an authority outside of California." Mr. Heney, also, came to the front with a letter; but Mr. Heney's contributions to the literature of the law are universally recognized as having a claim to consideration only for their vituperative charm, being in all other respects negligible.

Against all this may be placed the note of the editors of the *Law Reports Annotated* (15 L. R. A. New Series, 717). Writing from a distance, uninterested and presumably unbiased, they say of the decision: "The case is in harmony with such other cases as have had occasion to pass on the question." This they proceed to show by many pages of citation and quotation.

VIII

THE DYNAMITE EXPLOSION

*A Miracle by Which the Precious Life of a Great
Grafter Was Spared, and Which Enabled
the Regenerators to Inflame Public
Sentiment*

At no time during the Graft Prosecution was the performance allowed to flag. Whenever public interest seemed on the point of drooping something occurred to whip it up. And invariably the something served the purposes of the pro-prosecution press. It was as though some power had contrived a preternaturally ingenious species of drama,—a *pièce historique*, as it were, abounding in desperately conflicting events, sensational effects, picturesque situations, unlooked for rencontres, calculated to ravish the senses, fillip the imagination and keep everybody on the *qui vive*. The times were incessantly feverish. It was melodrama from beginning to end. Murder was always in the air. Conspiracies to kidnap or kill were of monthly occurrence—in the press, nowhere else. To the defendants were continuously imputed the most fiendish designs, thus justifying repeated admonitions to the public to be ever on the alert lest the complete subversion of government be

effected with the suddenness of a bolt from the blue. All of which served to harrow up the souls of the susceptible and inspire them with hatred of the abandoned wretches who had the audacity to persist in fighting for their liberty.

Never was this machinery for the firing of public sentiment so active as during the trials of Abraham Ruef. His first trial, after the repudiation of his immunity contract, was begun in April, 1908. The trial of Tircy L. Ford was then in progress before Judge Lawlor. This was the first time that two graft trials ran contemporaneously. Hitherto it was the policy of the prosecution to keep their forces united. But at this period there was need of renewed and extraordinary activity. More than two years had elapsed since the grand effusion of indictments, and nothing had been accomplished. The Graft Prosecution was becoming an old story. Also, as a consequence of criminations and recriminations incident to the scandal which Ruef had broached, it was too severely taxing the credulity of even the average citizen. Indeed the sacred cause of the regenerators was becoming an object of ridicule. And what worse fate could befall them than to have attention diverted from their virtues and concentrated on their preposterous affectations; to be laughed at for their follies rather than acclaimed for their patriotic endeavors! This was precisely the sad experience they endured for a time. Mr. Will-

iam R. Hearst's Examiner, quick to apprehend the temper of the times, shifted the civic heroes from the domain of the tragic to the atmosphere of the comic and held them up to the vulgar derision of the groundlings. "Bud" Fisher, cartoonist, introduced all the heroes to the readers of the Examiner in his Mutt sketches, and put the whole town on a broad grin. This was the posture of affairs when Ruef was forced to trial on an indictment charging him with having bribed a supervisor to pass the Parkside franchise. Every civic patriot was down in the mouth. The tide was running strong against the battered hulk of righteousness. But as events proved, while Mr. Spreckels and his associates were in the slough of despond, believing that they were being overwhelmed by mischievous accidents in the lottery of life, they were really groping in the darkest hour before dawn.

Midway in the process of impaneling the jury a violent wrench was given to the situation of affairs, heartening the prosecutors and filling the objects of their hatred with dismay. This overdue occurrence, by which a remarkable transformation was effected, was a dynamite explosion in Oakland, across the bay, which wrecked the home of James Gallagher, star witness and connecting link between Ruef and the supervisors.

For the men on trial what a strange fatality was this! How readily and reasonably might one conclude that the higher-ups had attempted

to assassinate the one man without whose testimony conviction was impossible! Nay, there was hardly any escape from the conclusion for anybody whose prepossessions were of a certain color. There was room for scepticism only for those hardened, unregenerate ones, who were capable of conceiving the possibility of what is technically known as a "frame-up," which species of theatrical expedient was rendered tolerably familiar to the people of San Francisco after they made the acquaintance of Detective William J. Burns.

The pro-graft press made good use of that dynamite explosion. With their speculations concerning it they set in motion all the combustible part of men's passions. Everything was taken for granted that served as nourishment for the spleen. The higher-ups were damned by wholesale. At first it was argued that the dynamiter was the hireling of the United Railroads, but in time it was assumed that Ruef had inspired the atrocious deed. No pro-prosecution editor permitted his "frail thoughts to dally with faint surmise." Yet that dynamite explosion had certain curious features that might perplex an unprejudiced mind. It was a terrific explosion. It tore away the front of the house, and wrecked every room, smashing furniture and twisting chandeliers. Evidently the explosive had derived force from reaction against the walls of the vestibule in which it had been placed. Perhaps

it did more damage than was calculated. But notwithstanding all the damage that was done no person was injured. The room that Gallagher said he was in when the explosion occurred was badly wrecked. Even the furniture was wrecked. Yet Gallagher did not receive a scratch. "By a strange freak," said the San Francisco Call, "not a person in the house was injured." It was indeed "a strange freak"! And the Bulletin commenting on the explosion exclaimed: "A miracle spared the lives of eight people." Yes, it was necessary to believe in miracles for the purposes of the regenerators. What appeared to be "a miracle" and also "a freak" might have been explained on the hypothesis that Gallagher and his family, having received a timely and impressive premonition, withdrew into the backyard just before the explosion occurred. Some persons who didn't believe in miracles visited the house—and they didn't believe Gallagher either. They said he was mistaken. To them his statement that he was in the house at the time of the explosion was incredible, nay, preposterous.

Several days after the explosion it was learned that some months prior to the occurrence the police had arrested a man by the name of Wilhelm on the suspicion that he was a dynamiter. He was in custody four days, and was then released. The news of his arrest was not given to the press. There may be more or less sig-

nificance in the circumstance that at that time former Elisor Biggy was chief of police, working in harmony with Detective Burns, at whose instigation the arrest was made. The Examiner, telling of this arrest after the explosion, said that Wilhelm told the police that Burns "employed him in his professional capacity as a bombmaker to make a bomb for a demonstration against Judge Lawlor and so turn public favor toward the prosecution." The police got on the trail of Wilhelm again after the explosion and arrested him, and he told his story. He said that J. M. Macey, a detective employed by Burns, and a young man whom he believed to be Burns's son, visited him one day in Oakland, and representing that they were employed by the United Railroads, told him that they would pay him \$200 for some bombs. Suspicious of them, he pretended to accept the proposition. They made an engagement to meet him a few days later, when, he said, he would have the bombs ready. Then out of two small pieces of pipe he made what looked like bombs, and according to agreement he met Macey and his companion and crossed the bay with them. Almost as soon as he got off the boat he was arrested by two policemen who locked him up. He was kept in custody until the city chemist found that the pipes did not contain explosives. This was a case of the professional bomb-maker foiling and hoaxing the ingenious detective. When



AFTER THE MIRACLE

This is the room in which Gallagher and his family are said to have been at the time of the explosion. The picture was taken twenty-four hours after the occurrence.

Burns was interviewed about this episode he explained that Wilhelm had been doing a great deal of talking about having had his professional services solicited by the United Railroads, and that he had hoped to trap him. This explanation was satisfactory to the pro-prosecution press.

The Ford and Ruef trials being in progress, every day the pro-prosecution press had something to say about the dynamite explosion. This is a specimen from the Call: "While not the slightest clue has been gained as to the identity of the perpetrators of the dastardly attempt on Gallagher's life, every circumstance connected with the affair points straight to one conclusion—that it was the work of men hired by men in desperate dread of Gallagher's testimony." Again in the same journal was printed the following: "That the dynamiting of former Supervisor Gallagher's house, by which he and seven other persons came near to death, was done for the purpose of keeping Gallagher off the witness stand in the graft cases seems to be the practically unanimous judgment. No other theory seems to hold water." What a wonderful instrument is that which registers the unanimous judgments of the people!

Every day the Bulletin was uniting its vociferations with those of the Call. And Francis J. Heney, though engaged in the prosecution of Ruef, found time to hurl reproaches at the

higher-ups. He is to be found quoted in the Call of April 24 as follows: "It was obvious that it was instigated by persons who can be injured by his testimony in the graft cases. I have long been expecting this to happen." Heney was a prophet, and not always for his own amusement. What he expected he did not always keep to himself. His powers of vaticination were employed not so much to predict catastrophe as to enlighten the people as to how many and what men he would land in jail. His favorite pastime was painting his prospective triumphs "on the cloud-curtains of the future." "I'll get him!" was his favorite phrase when referring to any man under indictment. Nor did he confine his predictions to indicted ones. All the anti-prosecution editors were to be put into stripes. For example, here's Heney at the First Congregational Church in Oakland, as disclosed by the Bulletin of March 27, 1908: "We will win despite Dargie and the Oakland Tribune, and we will persevere until we land Dargie where he belongs. And that you may not mistake my meaning in saying that, I mean that we will land him behind the bars." Poor Dargie! God intervened, taking him away from Heney. Dargie went to his grave in January, 1910, in a suit of unstriped broadcloth.

Enough of digression. No light was thrown on the dynamite outrage before the close of either the Ford or the Ruef trial. Nothing was

discovered beyond what has been stated: that Gallagher escaped by a miracle and that Burns had been dealing with a professional dynamiter. Yet the pro-prosecution press almost daily accused the defendants of having had a hand in the crime. The Bulletin charged that "for months Gallagher had been selected as a sacrifice to the terror of those whom his confession could harm. Within a week after the crime the Bulletin appeared with this scare-head: "PLOT TO MURDER PLANNED BY HIGHER-UPS A MONTH AGO." This was the story of a plot to murder the Bulletin's editor, Fremont Older, who, we were told, "was being shadowed by a thug in the employ of the United Railroads." For awhile Mr. Older was in constant dread of assassination, and he told the readers of the Bulletin almost every day about plots for his undoing. He printed a whole series of fac simile anonymous letters threatening him with instant destruction. On June 2 he published a letter under this headline: MURDEROUS HIGHER-UPS AFFIX BLOODSTAINS TO LATEST WARNING LETTER." From Older's standpoint these were indeed horrific times. But there were mean cynics who voiced the suspicion that Burns was Older's correspondent. There were thousands of people, however, who believed in Older and sympathized with him. Well did they remember that he had been kidnaped by an attorney connected with the defense. Older often reminded them of that harrowing

experience. True the Bulletin had libeled the attorney; but that was another story, and it was of no consequence from the editor's standpoint. True, also, the attorney, who lived in Los Angeles, kidnaped Older with the assistance of a sheriff's deputy who had a warrant. True, also, the complainant knew that as the regenerators were personally conducting the whole criminal department of justice in San Francisco it would have been useless to swear out a warrant in that city; but the fact is that Older was kidnaped in the sense that he wasn't vouchsafed the privilege of appearing before the nearest magistrate. The episode served as the pretext for a great hullo promoted chiefly by Detective W. J. Burns, who himself has since practiced the gentle art of kidnaping on a large scale. The kidnaping of Older enabled him to pose as a martyr to the cause of freedom with fine verisimilitude. And so when he represented himself to be in danger of assassination there were many people to take him seriously and to shudder at the infernality of the higher-ups.

Notwithstanding the incessant rage and hysteria of the editors after the outrage and miracle in Oakland; spite of the agitation which they personally conducted and all the noise with which they assailed the ears of men in the jury-box, Tirey L. Ford was acquitted and the Ruef jury failed to agree.

Ruef's trial ended May 21, 1908. The jury

was out forty-three hours, and from the first to the last ballot they stood six to six.

Between Ruef's first and second trials there was a long intermission. Gallagher was given a vacation, and permitted to take a pleasure trip to New York. Patrick Calhoun had been clamoring for a trial for two years, and was still clamoring, but the prosecution felt in need of a rest; that is, the attorneys and judges wished to recuperate from their arduous labors in court. Besides it was desirable to hammer away at public sentiment, to generate once more the mood vindictive. The machinery of justice might be brought to a standstill, but never for a moment was a truce declared. Skirmishing was continuous, the smoke of battle never lifted, the nerves of the dear general were always on edge.

As soon as the Ruef jury was dismissed the pro-prosecution press worked itself into a frightful fury, communicating its stormy emotions to all the gallant reformers who had been faithfully following the fortunes of the regenerators. The Bulletin, as always, out-vociferated its contemporaries, and hinting at the desirability of a Vigilance Committee, printed in large type the names of the six jurors who had voted for acquittal. This was the Bulletin's idea of exacting justice. One day it brought an incendiary editorial to a close with these words: "Citizens what are you going to do about it?" The ques-

tion seemed a most pertinent one to the editor of the Bulletin. It was certainly pregnant with inspiration; for the next day the Bulletin conspicuously "boxed" the following paragraphs on its editorial page—

CITIZENS:

What are you going to do about it?

Dynamiting assassins are pursuing the people's principal witnesses against millionaires who debauched your city.

Honest and fearless judges—Lawlor and Dunne—are ridiculed and lampooned for striving to enforce the law against rich felons.

Prosecutors of bribe givers are denounced and vilified for fighting for decency and justice.

Jury-fixing is systematically in vogue.

Your upper courts find technicalities with which to free criminals, and never discover laws that protect society and the State from the rapacity of boodlers. All your legal machinery for the punishment of crimes is seemingly manipulated to frustrate justice.

WHAT ARE YOU GOING TO DO ABOUT IT?

What the editor of the Bulletin hoped would be done about it everybody understood. He was always passionately hankering for a lynching bee, at which, of course, it was to be hoped he would not be on the wrong end of the rope. When the

Schmitz case was decided by the Court of Appeal the Bulletin printed the names of the judges and their home addresses, thus to intimate that they might easily be found by a bloodthirsty mob. Whenever things were not going to suit the Bulletin's editor he darkly intimated that the time was ripe for summary justice.

The Call, though never quite as rampageous as the Bulletin, was not averse to rousing "the spirit of the pioneers." On June 2, 1908, the Call printed a cartoon, the salient feature of which was a hand holding a noose. It was entitled "The Law." And this same paper, as though fearful that the organization of a Vigilance Committee was seriously contemplated, protested pharisaically, saying: "The Call's faith is firm in the ultimate triumph of justice. Dynamite or no dynamite, murder or no murder, witnesses will testify." In this same editorial, affirming its faith in the ultimate triumph of justice, the Call was constrained to confess that the current reign of terror was "a terrible thing." To this sentiment color was quickly given by all the preachers and politicians on whom the cabal relied whenever a demonstration or upheaval of any sort was required. The Rev. William Rader, sometime editorial writer of the Bulletin, took to the pulpit, and what he said was thus summarized in Bulletin headlines of June 8: "Flays People Who Defend Wealthy Rogues; Rev. William Rader Calls on Good

Citizens to Uphold Law; Enemies of Decency Sow the Seeds of Revolution and Death."

Great is the uproar of the interlude between trials! What energy and cunning—yes, what deviltry—must be involved in this loud raucous appeal to the unreason of the mob! One can almost admire the marvelous exercise of wit in the evil work.

Think you, good reader, that there was nothing of malign, malevolent genius in all this? that behind it all was the consuming passion of patriotism and disinterested love of justice? Here we see a coterie of reformers industriously setting a community by the ears, inciting men to deeds of cruelty and violence, and to what end? Ostensibly to vindicate justice. Presumably they were striving to strengthen the arm of government, to prop with moral instruments the tottering pillar inscribed to human liberty. But what was the occasion of all this heat and passion? Was the situation in San Francisco in 1908 similar to that of 1856 when Cora and Casey were hanged by the Vigilantes? No, the two situations were as different as night and day. In the turbulent days of '56 the Vigilantes were organized because of the corruption and impotency of the municipal government. In 1908 the men who were appealing to passion and prejudice *were* the Government. The mayor and all the supervisors were the puppets of the regenerators. The district attorney and his

deputies were representatives of the reform cabal. The chief of police was a man who had been employed by them, who was appointed to his office at their instigation, and who at this time was co-operating with them. All the cases which they were prosecuting were in two courts presided over by judges in deep sympathy with them. Yet for them, according to their representations, the times were out of joint. With the business of maintaining law and order completely in their hands, we find them trying to incite the mob to disorder. We have heard them complain that the machinery of justice was broken down; charge that the upper courts were in league with criminals, and that there was systematic jury-bribing. Yet the fact is that up to this time the upper courts had ruled against them but once. Several writs had been sued out to thwart them, and in vain. The Schmitz decision was the only decision against them, and that was a unanimous decision.

The truth is the regenerators were suffering defeat right along in the trial courts where they were masters of every situation. Spite of all their machinery for sifting juries, spite of the extraordinary latitude they were allowed in their method of getting juries, and notwithstanding the fact that every juror from the day he was sworn was put into the custody of one of their representatives, they could not convict on the purchased testimony of informers. Defeat after

defeat did they suffer before juries selected for them by friendly judges, and they must have well apprehended the inherent weakness of the prosecution, which was nothing more nor less than the character of their witnesses and the tainted quality of the only testimony they had to offer.

It is a truism that when men have truth, reason and justice on their side, they require nothing else to strengthen their equipment. Assuming that the regenerators were thus armed, how singular that with all the other advantages which they are known to have possessed they should have been making such a hullabaloo in the spring and summer of 1908!

Their activities I have but faintly described. At this time we find Heney and Langdon addressing meetings almost every night, exhorting the populace to come to their aid. Also, for the purpose at once of personally interesting a great many people in the prosecution and stirring public sympathy, we find the Bulletin begging the people to subscribe to a fund to support Heney, who was represented to be growing poor in the public service, and we find the Bulletin collecting dimes and quarters for the little patriot. At the same time Langdon petitioned the supervisors for an appropriation of \$120,000 which, he said, was needed for secret service men, and which of course was allowed. Addressing the supervisors he said: "It is no longer simply a fight of the law against graft

and grafters; it has become a fight of anarchy against law. The issue is whether the people will countenance or condemn assassination and murder." A few days later a Law and Order League was organized under the auspices of the regenerators. This was probably to indicate that the police were not powerful enough to cope with the crisis. But as there was nothing for the Law and Order League to do, it never did anything but meet and let off steam.

On June 20 when all the preachers were weary and the newspaper were becoming monotonous a timely message was received from President Roosevelt. It was thus described in headlines in the Call: ROOSEVELT WRITES A STRONG MESSAGE AGAINST LOCAL GRAFT; KEEP UP THE FIGHT, WRITES PRESIDENT ROOSEVELT TO SPRECKELS; EXECUTIVE TELLS GRAFT PROSECUTION TO IGNORE SLANDER OF ENEMIES." T. R. was alive to the situation. As much so as was the Christian Endeavor Union of Sonoma, which contributed to the literature of the period—a letter to the editor of the Bulletin: "We heartily endorse your public portrayal of the truth as it exists even though in so doing you almost take your life in your hand as it were." This sentiment was of course apropos of the dynamite outrage in Oakland.

On that crime light was presently to be shed. The Bulletin offered a reward of \$1,000 for information that would lead to the arrest of the perpetrators. It was still assumed, of course,

notwithstanding what Wilhelm had said about "a demonstration against Judge Lawlor," that the higher-ups were guilty of the crime. One day a newsboy found a letter in the street purporting to have been written by John Claudianes to his brother Peter Claudianes in the town of Chico, demanding money. "If you don't send the money," said the writer, "I will give you away, and tell all about the dynamiting." Here was certainly a clue. It was just such a clue as a raw hand at dramaturgy might have contrived. And it was a very good clue. For almost immediately after the finding of the letter John Claudianes was in the hands of the man of preternatural instinct, Mr. William J. Burns. The letter was found on July 1. It was learned that on June 29 John Claudianes appeared in the Bulletin office and demanded the reward, saying that he could find the dynamiter. But Mr. Fremont Older wouldn't believe him. Why Mr. Older was sceptical in this instance has never been explained; nor why he let John Claudianes get away. But then explanations are a weariness to the flesh, and it is easy to make them anyway. As it turned out, Older's scepticism didn't matter; nor his carelessness either. John Claudianes was doomed to be caught. Fate that prepares things from all eternity had decreed the writing of the fatal letter; the loss of it, also, and the sharp inquisitive glance of a newsboy. John Claudianes in custody, the rest was easy. He was

ready to make a confession. But like Editor Older, he, too, was sceptical. Where was the reward? Claudianes inquired. Mr. Older produced one thousand dollars in cash and put it on a table where Claudianes could feast his eyes upon it. Then the prisoner confessed that he and his brother, Peter, had been employed by Felix Paudevaris to explode the dynamite at Gallagher's home. According to Claudianes he was paid by Paudevaris, who got the money from Abe Ruef, "and," said the prisoner, "I understood that Ruef got it from Patrick Calhoun." Thus was the chain made complete. But John Claudianes, if he really told this story, didn't stick to it. It should be explained that he was a singular individual. A Greek, hardly out of his teens, illiterate, reared in the slums, a moral pervert, apparently insensible of the enormity which he confessed to having perpetrated, it was evident that for money he would do or say anything. Indeed, during the first week of his imprisonment he made it clear enough that he was an absolutely irresponsible person. The confession he is said to have made he stoutly denied. An attorney, engaged for him by his relatives, shortly withdrew from the case, and at the time made this statement for publication: "The feel of a gold piece in his palm means more to John Claudianes than the truth, more than the hope of exculpation, more than anything else on earth. I am convinced that he

knows something of the crime, yet I am equally certain that he had no part in the actual perpetration of the crime. There have been many reports to the effect that he implicated several of the defendants in the graft cases, but from all that he has told me that is not so. So far as his personal knowledge extends it does not implicate any person except his brother Peter. He has made no statement which drags in the name of Ruef or any other person. He holds the record for confessions. He made three complete ones, to say nothing of several piecemeal narratives."

A few months after the arrest of John Claudianes his brother Peter was arrested in Chicago. The newspapers were told that he confessed to Detective Burns that he did the dynamiting at the instigation of Felix Paudevaris. Peter Claudianes denied that he made the confession. He was convicted of the crime, however, and the principal, almost the only, testimony against him was that of Detective Burns who swore to the confession which the prisoner disavowed. John Claudianes was set free. There was no prosecution of John Claudianes. He had an attorney who challenged the regenerators to appear in court and dare prosecute his client. They were more discreet than daring.

That Peter Claudianes committed the crime there is but little doubt. Nor is it doubted that he was hired by Felix Paudevaris. But by whom was Paudevaris hired? Here is a mystery

that has never been solved. There is no testimony to show that there was ever any connection between Paudevaris and Ruef. The probability is that Paudevaris was hired by one of the numerous private detectives that fairly littered the streets of San Francisco. If found Paudevaris might be willing to disclose the identity of his employer, but the search for him, if it was ever seriously made, was discontinued long ago, though it was a matter of common notoriety that he had fled to a town in Italy. The great American detective, William J. Burns, never tried to capture Paudevaris. What the inspiration of the crime was we may never know, but that the purpose was not to eliminate the testimony of Gallagher it is not unreasonable to presume, for there is nothing more improbable than Gallagher's story that his home was occupied by himself and family at the time of the explosion. If he had said that, contrary to his usual custom, he and his family were in the backyard when the explosion occurred there would be no reason to suspect collusion between himself and the dynamiter, but such are the circumstances that they rather point to that conclusion,

IX

THE SHOOTING OF HENEY

*An Infuriated Ex-Convict Revenges Himself on the
Virulent Prosecutor and Commits Suicide
Just as Burns is About to Pursue a Clue*

When the work of impaneling the jury for Ruef's second trial was begun the newspapers were still raging against the defendant as the instigator of the dynamiting of Gallagher's home. And hardly had this theme been worn threadbare when they were afforded new and even better material for the rousing of resentment and indignation. In the midst of the trial, or rather during a lull in the proceedings, Francis J. Heney was shot down as he sat in the crowded courtroom, and for some hours all San Francisco believed his assassination had been attempted at the instigation of the defendant. As a matter of fact nothing worse could have happened to the defendant.

The echo of the pistol shot had scarcely died away when one of Ruef's attorneys, Henry Ach, turned to him and said, "This means your conviction." And Ruef knew. No man was more quick to catch the message that sparked from the bullet now lodged in the muscles of Heney's neck. No man, be sure of it, was more profoundly ap-

palled by the shooting than Abraham Ruef. Now were the murmurs of the populace sounding in his ear, portending something more to be dreaded than conviction. Swiftly the startling news is spreading. Here is the grand pretext for the press to kindle the flame of popular fury and fan it into a conflagration. Nor is the opportunity to conjure the spirit of violence neglected. Quickly spreads the contagion of public sentiment, with increasing velocity and an ever deepening, ever widening sweep of momentum. Within an hour of the shooting the League of Justice—how true to its name!—gets busy, ostensibly to stem the torrent of public indignation, its inspired orators assuming all the while that Ruef instigated the shooting. Was there ever such pharisaical naivete? And Mayor Taylor—always ready to lend a hand for the furtherance of the beneficent designs of the men that raised him from obscurity to crown their enterprises with smug respectability—alert was he for the potentialities of the propitious emergency. With public indignation foaming under the spur he takes a hint from the patriots of the League of Justice, and attends a meeting of them at which it is decided to hold a great public discussion of the shooting. A mass-meeting is called for the following evening. It would have been less disingenuous to call it an indignation meeting; for though the desire to pacify the public was affected, the newspapers of the morning after

the shooting were filled with the rabble-rousing words of Mr. Spreckels, Mr. Phelan and their several satellites. By all it was assumed that Heney was the victim of a plot. Nobody wished to make sceptics of the people. The avowed purpose of the League of Justice was to exhort the people to be calm; to lament of course that the machinery of justice was broken down, but to suggest the while that by strenuous efforts it might be repaired. Thus was the mob to be pacified. It was something of the same motive that animated Antony when he kindled the flame of sacred vehemence at the corse of Caesar. A decidedly paradoxical proceeding was this of the League of Justice, sanctioned by Mayor Taylor; if not disingenuous, to be attributed, then, to a most profound ignorance of psychological phenomena. Fancy rounding up the rabble when clamor is at the loudest, when it is blowing a hurricane, that the still small voice of reason may be heard above the tumult! Assuming that Mayor Taylor was acting for what he conceived to be the best interests of the community his conduct viewed in the perspective of time is not to be applauded for its wisdom. True, there was no outbreak, but the scene was set for one. There was the vast throng, composed indubitably of an element sensitive to the emotions of the patriots; in sympathy with them; convinced that the patriots were in sympathy with the cause of justice. There they

were, brought together in a narrow compass, where contagion might be facilitated by contact, where the atmosphere might be impregnated with a single breath, where their thoughts could be blown back on themselves; and there were the orators, the mayor, the district attorney and others all believed to be fighting a desperate uphill fight for the people against a band of most unscrupulous rascals leagued with thugs, defiant of the laws of God and men. What might have happened had there been no interruption must be left to conjecture. What the tone of the meeting foreboded may be inferred from this significant circumstance,—that an armed body of men was hastily organized for the protection of the Examiner office. The explanation is that the patriots had been writhing under the ridicule with which they were lashed by the author of the Mutt cartoons. Hearst and the whole Examiner staff were denounced for “poisoning the public mind.” The Mutt cartoons were the inspiration of much vehement oratory at the mass-meeting. How bitterly those cartoons were resented we may learn from the report made by Mayor Taylor’s whitewash committee (William Denman, chairman) which was made public about a year after the shooting. “The so-called Mutt cartoons,” says the report, “sought by a broad but clever ridicule to convey the impression that Mr. Heney was a coarse and unprincipled charlatan and that the entire prosecution was founded

in injustice and carried on to satisfy a personal malice. One of these cartoons, which subsequently became notable, depicted him as a bird flying in the air, about to be brought down by a fowler's gun. It would not have incited any balanced person to commit violence, but to a weak or inflamed mind it might have been suggestive; though no doubt it was not deliberately so intended."

As we have said we can but speculate as to what might have happened as a result of the mass-meeting had there been no interruption. At the highest pitch of the mob's emotions there came a distraction that no eloquence howsoever impassioned could overcome. It was the news that the man who shot Heney had committed suicide in his cell in the county jail. The news was brought to the platform by an Examiner reporter, who found the speakers reluctant to make the announcement, which they did not make for some minutes, but kept on haranguing the audience. Whatever their motive for withholding the information they possessed, the fact is that as soon as it was given the people dispersed. There are some occurrences that point to a conclusion without the use of a syllogism. Perhaps it occurred to the mob that it was incredible that Ruef should have hired a man to assassinate Heney and also to commit suicide. Or perhaps it was thought that as the man had committed suicide it might be worth while to hear all the details

of the shooting before jumping to conclusions. At any rate the people dispersed to their homes, and the next day they were better informed about what had occurred.

But let it not be supposed that the pro-prosecution press ever abandoned the theory that Ruef instigated the shooting of Heney. That theory was too valuable for the purposes of the prosecution to be abandoned. No, from the moment that Heney was shot he became a martyr to the cause of civic righteousness, and as such he was employed as an apparition for dramatic effect throughout the remainder of Ruef's trial. In the circumstances it becomes important that we should know how justly qualified he was for the role.

Heney was shot by Morris Haas, a saloon keeper, who was accepted as a juror for Ruef's first trial, the one which resulted in the disagreement of the jury. Haas had served a term in the penitentiary for embezzlement. More than twenty years before his appearance in the jury-box he was arrested on complaint of a firm by which he was employed, for the embezzlement of a small sum of money. He pleaded guilty, and received a light sentence. He served his term, was released from prison and restored to citizenship. Thenceforward, so far as anybody knows, he lived an honest life. He married, became the father of several children, and no member of his family knew of the blot upon his record. The

sin of his young manhood had long since ceased to haunt him. His neighbors knew him as a respectable citizen, he had many friends who never dreamt that he had worn stripes. In January, 1908, when, in accordance with law, the Superior Court judges of San Francisco were making up the jury roll for the year, one of them put the name of Morris Haas in his list, and when Abraham Ruef came to trial Morris Haas was drawn as a juror. We are told that he was eager to get on the jury. The whitewash committee says in its report that the prosecution had information that Haas intended to sell his vote for Ruef's acquittal. This is not unlikely. The prosecution had a vast volume of information about jurors, not all of it accurate. It was gathered by private detectives who went about learning the sentiments of citizens. When Ruef was on trial they had a bureau from which they sent out a decoy petition to have the graft prosecution stopped, the purpose being to ascertain the attitude of prospective jurors. By means of another paper they solicited citizens to join a club organized for the prosecution of the higher-ups. They even went so far as to interview men summoned as jurors who had been examined and passed, and from this conduct contempt proceedings resulted. Whenever the prosecution wished to get rid of a man without wasting a challenge, a private detective would take the witness stand and swear that the

man had made certain statements to him conclusive of prejudice. But notwithstanding the industry and adroitness of the detectives Haas was for a time acceptable to the prosecution. The charge that he was eager to get on the jury is hard to reconcile with the fact that he went to the judge on the bench and asked to be excused from service. Was it because he feared that his record might be disclosed, and that shame and disgrace would be brought upon his family? He was certainly hazarding much in subjecting himself to the deep scrutiny from which there was no escape for any man sworn as a juror for the trial of Abraham Ruef. It was not likely that he would lull himself into a sense of security. The newspapers were full of the searching investigations that were being made from day to day. Haas must have felt that the resurrection of his past would be the inevitable consequence of his appearance in the jury-box.

From the record of Haas's examination as to his qualifications to serve as a juror it appears that he answered all questions satisfactorily. At all events he said nothing indicative of bias or prejudice. A middle-aged German, unsophisticated in appearance and manner, there appeared to be nothing objectionable to him, and so far as anybody knew there was nothing objectionable unless it was from the standpoint of the prosecution, inasmuch as Haas was a Jew. Ruef being a Jew, and the

two rabbis, Dr. Nieto and Dr. Kaplan having been involved in the controversy over the immunity contract, it became the policy of the prosecution to exclude Jews from the jury-box. Perhaps for that reason it was considered desirable to get rid of Haas, and perhaps for that reason the investigation was made which resulted in the discovery that Haas was an ex-convict. At any rate his past was uncovered, and one day it was made public in a manner calculated to startle and disconcert the defendant and his counsel; also to warrant the pro-prosecution press in emitting some fresh shrieks.

The unveiling of the ex-convict's past was a matter of studied effect and no little craftsmanship. Whenever Heney had a telling circumstance to present he was partial to the tableau form. Nothing worth while was ever permitted to touch the level of the commonplace. Just before the climax there was much action that seemed to denote that shortly there was to be something in the nature of a denouement. Rudolph Spreckels came into court, looking wise. He held a whispered consultation with Burns. The detective hurriedly approached Heney. More whispering, and many glances toward the jury-box. Then up rose the prosecutor. Taking a photograph from his pocket, he walked up to the jury-box and glared at Haas. Exhibiting the photograph to the juror he asked him if he recognized it. It was the photo-

graph of Haas in stripes, taken when the juror was in the penitentiary. The unfortunate wretch was for a moment dumfounded, transfixed. Heney smiled and repeated his question. Trembling in every fibre, his eyes filled with terror and dismay, Haas staggered to his feet, and in a voice broken with sobs he pleaded like one in the depths of agony to be spared from shame.

Heney's face wore a cynical smile. "Didn't you serve a term in the penitentiary?" he asked.

"Oh, Mr. Heney," the cowering wretch exclaimed, "if you only knew about the penitentiary you wouldn't be so harsh. I asked the court to excuse me, and he wouldn't."

Judge Lawlor heard this statement and uttered no word of contradiction. Nor did Heney challenge the assertion; yet his tone and manner plainly denoted that there was not the slightest reason to doubt that Haas had tried to get on the jury, and that he was in the jury-box for an improper purpose. No evidence did he introduce to prove that such was the case. If he had any information regarding Haas's purpose he never made it public. No information of that nature has ever been made public. But there in the official record is Haas's statement that he tried to evade service, that he importuned the judge of the court to excuse him from service. Nothing more was said on the subject that fatal day. In his panic terror Haas rambled on incoherently. His remarks plainly showed

that his mind was preoccupied with the shame of his past, the humiliation of the present; that he had no thought of the issue of the moment.

"I was vindicated on that charge," he exclaimed.

"I don't care anything about that," said Heney.

Of course he didn't care about it. All that he cared about, presumably, was the effect of what the public would regard as the trapping of a scoundrel who had been employed to hang a jury. Perhaps the wincing of the man in the box was balm to his soul.

"Well," Haas went on, "the man who brought that trouble to me—I never had no trial. I am willing to be tried now and prove my innocence—but the man that brought on that trouble he jumped out of a four-story window." This speech Heney ignored, but went on with his questions till interrupted by counsel for the defendant who interposed in behalf of the juror, saying that it was unnecessary to pursue so painful an examination. They would allow the challenge. But Heney wasn't satisfied. He was eager to make it appear that Haas was a tool of the defendant. Not till the incident had yielded sufficient material for the newspapers did Heney desist, and then Haas with bowed head staggered out of the courtroom.

This incident furnished the pro-prosecution press with much material for telling comment. The newspapers took it for granted, to be sure,

that the ex-convict had been hired by Ruef to serve as a juror and vote for acquittal. Not to the newspapers did it matter that they had nothing but gratuitous assertion on which to base their imputation. True, there had been rumors of jury-bribing, and there had been arrests for jury-bribing, and certainly Ruef was not a man to scruple at jury-bribing, but it is indisputable that the prosecution set the pace in the business of tampering with talesmen, and it will certainly do nobody injustice to assert that most of the noise that was made about jury-bribing was artfully created chiefly for the one purpose of inspiring jurors who might be inclined to vote for acquittal with dread of being suspected of having sold themselves. The noise was incessant; men were arrested for jury-bribing, and they were prosecuted, and they were acquitted. In the Call of October 30, 1908, the subject was thus discussed by, District Attorney Langdon: "The prosecution has been in possession of evidence to show that for many months a wholesale system of jury-bribing has been going on in these graft cases." That statement served its purpose. It gave color to insinuation and rumor. The evidence which Mr. Langdon said he had in his possession was never produced. The statement is characteristic of the ways of the prosecution. It was thus that the business was managed out of court; thus that the public was prepared for failure in court and

rendered susceptible to whatever suggestion was deemed expedient for the moment. And consequently when the discovery was made that an ex-convict had been sworn as a juror the potentialities of the situation must have excited the enthusiasm of the prosecutors. Here was the chance to illustrate by example, to point out a specimen of criminal handiwork, so it was not neglected. Yet there is not an iota of testimony anywhere, not even of the hearsay variety, to show that Francis J. Heney exposed the brand of infamy on Haas for any other purpose than that of exciting prejudice against the defendant. But there is testimony, there is a flaming record, to show that in the very case in which Haas appeared, the prosecution tried their utmost to have accepted on the jury a man whom they believed to be so strongly prejudiced against the defendant, so ardently in sympathy with the prosecution, that with him in the box acquittal would be impossible.

* * * * *

Haas, as we have said, staggered out of the courtroom with bowed head. He vanished. For a brief space he lived unnoticed, unremembered. The trial went on, the jury disagreed. Two months later Ruef is again on trial. This time for bribing a supervisor to vote for the trolley franchise. About four o'clock on the afternoon of November 13, 1908, a recess was taken.

Judge Lawlor went into his chambers, the jury into an adjoining room, Ruef and his attorneys into a corridor. Heney remained seated at a table, the spectators held their places. Suddenly, hurriedly, a man rose from a chair a short distance from where Heney was sitting, drew a pistol, fired. Heney fell to the floor with a bullet in his neck. His assailant, quickly seized by officers of the court, was thrown to the floor and manacled. He was recognized as Morris Haas, the ex-convict. Within twenty minutes after the shooting, Haas still lying on the floor, was questioned by William J. Burns and a police captain. Questions and answers were taken down by a stenographer. The detective's questions were designed to draw from the prisoner a confession that he had been hired to do the shooting, but there is not a single answer to give the slightest color to such a theory. The prisoner's first words were: "I would be ashamed if I hadn't done it. Yet I have lots to live for. I have a wife and four children. But I'd change places with Heney right now. Oh! the life I've lived since Heney denounced me in open court." Burns interrupted with questions as to where he had been, and to whom he had talked, etc., but Haas, hysterical and incoherent, could hardly be dissuaded from talking about anything but the crime for which he had been sent to the penitentiary.

"There is no use of going over that stuff,"

said Burns; "come down to reason—what was your reason for shooting Mr. Heney?"

"I shot him for humanity's sake," was the reply.

"Why didn't you shoot Ruef for humanity's sake?"

"Because he didn't denounce me that day. Don't forget, Mr. Burns, I got married seventeen years ago and raised a family of four children. Now look at what they've suffered. My boy was so proud when my name first appeared in the papers. He said, 'Why papa, your name is in the paper—'"

"Whom did you have a talk with about the matter before you came to shoot Mr. Heney?"

"Oh, not a soul. I kept it to myself. I talked to myself all the time. I wish, Mr. Burns, they would shoot me. What do I care. I don't care a scrap."

Further questioning elicited the information that immediately after the exposure of him in court Haas closed his saloon, paid no more attention to business, and thereafter wandered about the nickelodeons. "They're dark," he explained, "and I used to hide myself in them." What a world of pain and torture was imaged in this confession wrung from an anguished fugitive soul! But the stern righteous detective, the unemotional, inexorable Javert, intent upon getting to the bottom of what he conceived to be an atrocious plot, experienced no twinge of pity.

"Why didn't you shoot Ruef instead of Heney?" he demanded.

The prostrate man, apparently insensible of the question, was now muttering to himself: "Oh! if Heney hadn't brought that picture. He showed my picture in stripes. I couldn't say a word."

From the detective's standpoint the inquiry was unproductive. It was brought to a close. Haas was sent to the county jail, and Ruef, who was then out on bonds, was locked up there also, as it was feared that his life was in danger. "Ruef," said the Chronicle the morning after the shooting, "is at the county jail by special order of Judge Lawlor. The whole city being horrified at the cold-blooded shooting of a public official this measure was necessary, not only to prevent any possible move on the part of the defendant, but for Ruef's own protection in the present excited state of the public mind." And it was in this excited state of the public mind that the patriots of the League of Justice got together, and called a mass-meeting. What moved them we learn from the veracious Call, personal property of the Spreckels family: "Imbued with an intensity of feeling born of the crime that dyed scarlet the court of justice where Francis J. Heney pleaded the cause of the people, two hundred members of the Citizens League of Justice gathered last night in the Pacific Building, and after listening to stirring addresses called upon

the public to pledge its aid to the cause of justice. The meeting was hurriedly called, but the response was a deep toned note of determination." Conspicuous among those present, as may also be learned from the Call, were Father Crowley, William Kent and Will French, all of the impartial whitewash committee; also, Hiram Johnson, now Governor of California, Fred Sanborn of the Oliver grand jury, now a job-holder of the Johnson administration, Walter MacArthur, labor agitator, Richard Cornelius, president of the Carmen's Union, the man that precipitated the strike against the United Railroads, and Mayor Taylor. The Call said that while all the speakers "counseled moderation the bitterest resentment was expressed in the strongest possible language of the methods of the enemies of the prosecution." Among the speakers who counseled moderation was Richard Cornelius, who said, according to the Call, "I think the time has come when there should be a vigilance committee to deal with criminals in this city. I am ready to join such a committee." And the good mayor was quoted in these words: "No one can tell who or what is back of this horrible deed."

Assuredly no one could tell. Nor was there any reason for suspecting that there was behind it anybody but the maddened, infuriated wretch by whom it was perpetrated. Indeed it may well be doubted that the patriots entertained the suspicion which they industriously disseminated

whilst pretending to be averse to inflaming the multitude. It was manifestly not to the interest of Ruef or the higher-ups to cause the assassination of Heney. On the contrary it was to their interest to keep him alive. He wasn't convicting anybody. His arrogant and brutal conduct had disgusted the whole community. His manner was offensive to juries, and it seemed impossible for him to try a case without blundering fatally. Why should the defendants turn public sentiment against themselves by making of the impotent Heney a martyr to the cause of civic righteousness? In all California there were no men who ought to have been more eager to preserve Heney from harm than the defendants in the graft cases. The patriots may have had a different conception of the matter. And they may have had no desire to incite the passions of the mob, but if so their tone and sentiments were far from felicitous. Not one of them failed to assume that Heney was shot because he was prosecuting bad men. Even Mayor Taylor, who didn't know what was back of the "horrible deed," embraced this hypothesis, as may be seen from an address which he issued to the people and caused to be published in all the papers in advance of the mass-meeting. "It is no wonder," he said, "that the public is wrought up. The people would not be the good citizens they ought to be unless they were wrought up." And he added: "Of course the whole community with

but few exceptions will now be behind the prosecution." Thus we hear it again,—the ever-recurring refrain addressed to the ears of the multitude: "Come, be good fellows, get behind the prosecution." And still the patriots were in control of the whole machinery of government; not only that, they had their League of Justice, their Woman's Heney League, their perspiring preachers, their newspaper organs and no small proportion of public sentiment. But they never quit begging for more; nor for a moment did they cease fulminating against the "poisoners of public opinion," as they described their critics.

In the same issue of the Call in which the mayor's address is printed we find, "Burns says murder plot was surely planned by others." And in the Examiner of the same day Burns is quoted thus: "From my investigation, and what I know, I think the whole thing leads up to Ruef." What Burns knew has never been divulged so far as it is possible to ascertain. Yet he may have communicated with Theodore Roosevelt, President of the United States, for that gentleman appeared to know, though far away in Washington, D. C. While the movement to assuage the feelings of the people was on, the amiable and timely President uttered himself somewhere in the neighborhood of the psychological moment. From him came a telegram addressed to Rudolph Spreckels, indicating that either he had received important information or that his clairvoyant per-

ceptive faculties had been at work. The following is an excerpt: "The infamous character of the would-be assassin, no less than the infamous character of the deed, call attention in a striking way to the true character of the forces against which Heney and you and your associates have been struggling." And to the peaceful voice of Mr. Roosevelt were added the clarion tones of the Call, demanding to know, "Will they stop at nothing? Are not stealing, perjury, bribery, dynamiting, murder, enough!" In the evening, just before the people assembled in mass-meeting, the Bulletin expressed its desire for peace and quiet in this contribution to the literature of the passing show: "The public will not be easily convinced that a man who would hire a murderer to kill Gallagher would be too scrupulous to hire or procure a murderer to kill Heney." Likewise the Evening News: "Not since the days the Vigilantes strangled the thugs who held the city by the throat, in the gold mining days, have the law-abiding citizens been so horrified." And to quell more effectually the spirit of turbulence the Bulletin, deeming it again the psychological moment for an anonymous letter, printed one said to have been found among some unopened letters on Mr. Heney's desk. This is the letter:

Dear Sir: Have Detective Burns look carefully into and after A. Ruef. Be on your guard and await more startling developments. I know whereof I speak.

—A Friend.

Doubtless this letter was found by the argus-eyed Burns, but on whose authority it was opened the Bulletin did not say; indubitably not on Heney's, as Heney was then in the hospital waiting to be operated upon. The detective probably divined the contents, and therefore felt no compunction against opening it. At any rate, that he was sure it was something deserving of his attention, may be inferred from the following quoted from the Bulletin: "Burns says it has every sign of genuineness. It is significant. It is a clew." Never since has anything been heard of that letter. The clew was abandoned almost as soon as it was found. The explanation probably is that as on the evening of the day on which it was found Haas committed suicide in his cell in the county jail, immediately it became expedient for Burns and his associates to propagate a new theory in order to keep alive the flame they had been fanning. This theory was that Haas had been killed by the higher-ups. But it was soon observed that this theory was not winning credence.

At the time of the tragedy in the jail there were two policemen outside the cell door. They had been stationed there by Chief Biggy, the ex-elisor of the prosecution. And Biggy himself was in the jail when the tragedy occurred. But a few minutes before he was in the cell talking with Haas. In the circumstances it was not to be believed that Haas had been murdered.

It was more likely that he committed suicide. But where did he get the derringer with which the deed was done? Ah, the conclusion was inevitable. The derringer must have been smuggled into the jail by an agent of the higher-ups. So Burns surmised. It would never do to presume that the prisoner had the weapon on his person all the time of his imprisonment, for it was *by Burns himself that Haas had been searched*. Perish the thought that this renowned policeman had failed in so important a case to make a thorough search! Yet nobody ever saw Haas's shoes removed in Burns's presence. Nor has Burns ever said that he examined Haas's shoes.

While conjecture was rife Burns conceived a new theory. As Mrs. Haas, the mother of the dead man's four children, had visited him at the jail, perhaps, suggested Burns, she supplied her husband with the weapon that put an end to his miserable life. This certainly was the meanest, most cruel of all the surmises expressed in the excitement of the moment. Poor, forlorn woman! Even she in all her bitter sorrow could not escape the imputation of being the agent of assassins. And such was the brutality of sentiment and feeling in those days that of this wretched woman, whose affliction ordinarily would have stirred the melting passions of humanity and commiseration, not a kind, sympathetic word was spoken in any newspaper.

There was pity for none but Heney, the martyr, with a bullet lodged in the soft tissues of his neck, suffering from what was little more than a superficial wound, but which was represented to be of the most vital character. For the man whose wound no water could cleanse save Lethe's stream, whose body was now in the morgue, there was nothing but contumely and denunciation. And for the widowed mother of his children there was naught but the suspicion that her hand was dyed in his blood. But the suspicion did not endure. The policemen who entered Haas's cell immediately after the shooting, and who examined the body, had found the bottom of one of the legs of Haas's trousers turned up above the top of his elastic gaiter, and when the body was stripped it was found that the ankle was bruised. It was therefore a plausible theory that Haas had had the derringer concealed in his shoe, and this was demonstrated to be quite feasible, much to the disquietude of Detective Burns.

All that was subsequently learned regarding Haas was what was told by Mrs. Miriam Cohn, who had known him many years, and in whom he confided, she having known of his charred past. To her he went when summoned for jury duty in the Ruef case, to be advised as to how he might escape service, saying that he feared exposure. Again to her he went when burning with shame and bowed with grief. According

to her testimony he was behaving like a madman, and he talked of killing his family and himself. He said that one night when his wife and children were asleep he was on the point of killing them all, when Mrs. Haas awoke. His nerve failed him. In such a frame of mind how commonplace the mad impulse that seized him, the blind passion for revenge! A man bereft of reason was Haas, incapable of realizing that the last shot fired, the fatal shot, was the one by which he avenged himself.

X

THE BIGGY MYSTERY

*Hounded by the Regenerators the Chief of Police
Comes to a Tragic End*

The shooting of Heney and the suicide of Haas were not the only stirring events that diverted attention from the Ruef trial. Still another tragic event marked the progress of the civic drama. Chief of Police William J. Biggy went to his death in the waters of San Francisco Bay, and to this day the mystery of his taking off is unsolved. The death of Biggy gave the regenerators the most severe shock they had yet experienced. For the first time they knew what it was to be suspected of the kind of foul play which they had so often imputed to their adversaries. The Biggy tragedy followed on the heels of the Haas tragedy, and may rightly be regarded as the sequence of it, whatever may have been the nature of the fatality.

As a result of the Haas tragedy the regenerators demanded that Biggy be removed from office. Detective Burns, seeking to exculpate himself at the expense of Biggy, threw all the blame for Haas's death on the chief of police. He would have the people believe that it was through the chief's negligence that somebody

had contrived to give Haas the derringer with which he killed himself. All the regenerators, of course, were in sympathy with Burns. Such was their natural tendency, and this tendency was strengthened by the circumstance that Biggy had fallen into disfavor. Made chief of police by the regenerators, Biggy found that he was expected to act as Burns's subordinate. Burns presumed to dictate the policy of the police department, to employ it for the political purposes of the regenerators, and also, (according to Biggy) for his private ends. But Biggy being a man of some independence of character resented the detective's obtrusiveness. The appearance of being dominated by the detective was galling to him.

Early in his political career Biggy served a term in the State senate, where he made a record as a reformer for the most scrupulous honesty. Of that record he was extremely proud. And so, though as an elisor, in an atmosphere of passionate reform, during all the time the regenerators were regarded as sacrosanct and the people were clamoring for the punishment of self-confessed grafters he was in ardent sympathy with all the purposes of the prosecution, as chief of police he became sensitive to the responsibilities of his office and scorned to play the part of puppet. Still in sympathy with the prosecution, ready to aid his friends in every legitimate way, yet he revolted at the demands of Burns, and the

two men fell out. At first there was no perceptible breach. Up to the time of the shooting of Heney Biggy remained on friendly terms with Joseph Dwyer and other representatives of the prosecution. But immediately after the shooting, permitting himself to be interviewed by reporters, he enraged the regenerators by pooh-poohing the idea that there had been any conspiracy to kill Heney. He regarded that idea as preposterous. The regenerators pronounced him a fool. Then came the suicide of Haas. And Biggy again incensed the regenerators. He knew that nobody had had an opportunity of putting the derringer into Haas's hands after he reached the jail. It was plain enough to him that Haas had not been thoroughly searched; and for Captain Duke's complicity in that blunder the chief preferred a charge of negligence against him, and the captain was censured by the police commission. Biggy publicly asserted that it was clear that Haas had had the derringer concealed in his shoe. This was too much for the regenerators. They demanded Biggy's removal. They demanded it in shrieks and yelps. They attacked Biggy with the same blind fury with which they had been assailing the higher-ups. Their newspapers entered upon a systematic course of abuse. To convey an idea of their tone and temper it will suffice to quote from one of many editorials that appeared in the Call, one that was printed on November

18, 1908, four days after Haas's suicide: "Hourly public indignation rises against the chief of police; hourly the public demand for his removal is strengthened. . . . The public peace is not safe in his incompetent hands. He is unfit to be chief of any public department. Biggy is a blowhard. Biggy is chicken hearted and chicken witted. Biggy has no shame. Biggy has no honor either in his public or his private relations. Nobody respects him. Not even Biggy." This specimen of Eatanswill Gazette journalism is amusing in the blissful unconsciousness that it exhibits; for be it remembered the men that inspired the foregoing were men who formerly had such great faith in Biggy's courage, ability and integrity that they had him appointed elisor and also chief of police.

Of course public indignation was not rising against Biggy, though not unlikely the regenerators believed that it was. As they seemed at all times to be obsessed with the notion that their own emotions were infectious, they may have thought that their indignation had seized upon the whole community. It certainly spread to the League of Justice, but that was what even the regenerators might have expected. The League of Justice went quickly into solemn conclave to "resolute" against Biggy, to demand that the mayor cast him into the outer darkness. And the Bulletin, its indignation always on tap,

railed against Biggy in its customary fishwife vehemence. The Bulletin charged Biggy with having turned the police department over to the higher-ups. Spreckels, Langdon and Burns held meetings to denounce Biggy. Singularly enough Mayor Taylor and the police commissioners were not affected by all these manifestations of hostility. For the first time Mayor Taylor showed signs of dissenting from the Graft Prosecution. The importunities of the frantic regenerators were becoming a little too unreasonable even for him. He had faith in Biggy. He was not to be moved. Perhaps Biggy had told him a thing or two that opened his eyes. The thought is justified by subsequent events.

When the regenerators found the mayor disinclined to yield to their impassioned demands they neglected to charge him, too, with having sold out to the higher-ups, but they became all the more abusive of Biggy. It was as though they had resolved to cover him all over with infamy. From day to day he figured in lampoons and cartoons. The Bulletin and Call discussed his domestic troubles. They intimated that he was haunting houses of ill repute. Somebody induced his wife, from whom he was separated, to go to his office and create a scene, which furnished his enemies with material for offensive discussion.

The suicide of Haas occurred on the evening of November 14, 1908. From that time till the

night of November 30 Biggy was hounded incessantly by the regenerators. That night Biggy boarded the police patrol boat, and took a trip to Belvedere on the north shore of San Francisco Bay to visit Police Commissioner Hugo Keil. He spent more than an hour with Keil, discussing his relations with the regenerators. He talked of resigning, saying that he did not wish to embarrass the Administration by remaining in office. At first, according to Keil, he seemed somewhat depressed, but his spirits were soon revived. Keil dissuaded him from resigning, told him the commissioners would stand by him and that there was no occasion for worry or anxiety. Thereafter he was in a cheerful mood and communicative, telling Keil of the motives of the men who were attacking him, of the shameful things they wanted him to do, and of his firmness in resisting their evil importunities. By the time he was ready to leave for home he seemed refreshed as a result of the interview. Keil accompanied him to the launch, which was in charge of the engineer, William Murphy. So far as Keil knew there was nobody else aboard the boat. The commissioner and the chief bade each other good night. They never met again.

When Biggy was last seen alive, according to Murphy's testimony, the launch was near Alcatraz Island, which is about midway between Belvedere and San Francisco. He was then re-

clining on a seat at the rail. He complained of being cold, and the engineer offered him some whisky, which was refused. That was about half an hour before midnight. Murphy says he never saw him again. When the launch arrived in San Francisco Murphy was alone. His passenger had disappeared. In a state of great excitement Murphy rushed to police headquarters with the news. Out into the bay went the patrol boat again; this time with a captain of police aboard in quest of his missing chief. It was a futile trip. The dead body of William J. Biggy was lying at the bottom of the bay, whence it rose two weeks later to float in the sight of men.

Now what were the circumstances of Biggy's death? Was he murdered? Did he commit suicide? Or was he accidentally drowned? Nobody that knew him believes that he committed suicide. He was a Catholic, a regular communicant of the church, and the church authorities had no hesitation in burying him in consecrated ground. He may have been drowned accidentally. Perhaps as a result of the lurching of the boat he was thrown overboard. But Biggy was known to be a powerful swimmer, and certainly, if he had fallen overboard, he would have called lustily for help. On the night of the tragedy there was no wind, and the waters of the bay were smooth, and so there had been no very sudden violent lurching of the boat.

Nevertheless the theory that Biggy was accidentally drowned is not less plausible than the theory that he was murdered. But we may entertain the theory of murder without going so far as to believe the leading regenerators capable of having had a hand in so atrocious a crime.

San Francisco, as the reader knows, was sorely afflicted with a plague of private detectives. Among them were some very desperate characters, and they were ready at all times to do not only what they were ordered to do but to act even on what might be an unintentional hint of what was desirable to be done. At the time of Biggy's death, as we shall see, nothing seemed to be more desirable to some persons than to be rid of him. Biggy had been threatening to divulge some important information. On the afternoon of the day of his disappearance he met Congressman Julius Kahn, and told him that he had much interesting matter to disclose with respect to the persons who were persecuting him. And he promised to unburden himself to Kahn in the near future. He was big with this interesting matter when he visited Commissioner Keil. And Commissioner Keil, as soon as he heard of Biggy's death, sat down and made a full report of his last conversation with the chief, reciting therein the charges made by Biggy against some of the most prominent of his tormentors. This report he gave to

Mayor Taylor who refused to accept it, thus preventing it from becoming a public record. Whether that was Mayor Taylor's reason for returning the report to the commissioner we shall never know. At any rate the report was never made public. Keil refused to give it to the press, but he permitted a few of his friends to read it, and I have it on their authority, men of high standing in the community, that it was a pretty severe indictment of a detective and certain editors. I also have it on the authority of men to whom Keil was communicative that he was convinced that Biggy was in danger of assassination. Biggy told him that he was getting information from a traitor in the enemy's camp. With such misgivings did Biggy inspire Keil that the latter, learning that the chief was unarmed, persuaded him to take the loan of a pistol.

As soon as Biggy's body was found Joseph Dwyer of the Graft Prosecution obtained special letters of administration on the dead man's estate, and it was reported in the newspapers the following day that Dwyer accompanied by Heney's partner, C. W. Cobb, went to Biggy's office and took possession of all his private papers. Was it important that some of those papers belonging to the former elisor should not be seen? At a later day, as we shall see, it seemed to be of the highest importance that all the records of the Graft Prosecution should disappear forever.

A coroner's jury found that Biggy was ac-

cidentally drowned. But coroner's juries are not noted for soundness of judgment. Coroners are not given to searching investigations, nor are the results of their inquests always taken seriously. In this instance the coroner did not elicit all the available evidence. Police Commissioner William Cutler while on the witness stand refused to tell all he knew, and the coroner, an avowed supporter of the regenerators, made no effort to compel him to tell. Apparently he was satisfied with Cutler's explanation, that if he told all he knew it would cause a great scandal. But Cutler did tell some interesting things. He said that the life of Chief Biggy had been threatened by men whom he believed "would stop at nothing." He said that Biggy had been spied upon for months by detectives employed by Burns.

"Did he tell you that his life had been threatened?" the coroner asked.

"I knew it had," was the reply.

"Was he in fear?"

"No, but he knew they would go to any extreme to get rid of him."

"What parties do you refer to?"

"That I decline to answer."

"In your own opinion he had sufficient cause for this belief?"

"I have satisfactory proof."

Notwithstanding this proof Commissioner Cutler said he did not believe Biggy had been murdered. Asked if he believed that the chief had

committed suicide, he said he was certain he had not. "He was too cheerful," said the witness, "when I last saw him, the day of his death; besides he had plans to carry out, about which he was most enthusiastic."

Detective Burns took occasion to deny in the public prints that he had hounded the chief of police. The assertion that Biggy had been under the surveillance of detectives, who were the special agents of the district attorney, paid by the city to assist the prosecution, he pronounced a slander, and promised to have the matter investigated at once by the grand jury. But the matter was dropped. Burns was always threatening to confound his critics with the aid of the grand jury or the courts, but never did he carry out any of his threats. He promised to sue the Post for libel on account of charges that grew out of the Biggy tragedy, and when dared to do so he left town.

After the coroner's inquest nothing more was heard of the Biggy tragedy till nearly two years elapsed. In the month of June, 1911, William Murphy, the engineer of the police patrol boat, became a raving maniac. In his delirium he saw what he believed to be the ghost of William J. Biggy, and in his terror he shrieked, "I don't know who did it, but I swear to God I didn't."

XI

THE CONVICTION OF RUEF

*A Jury after Listening to Vague Threats from the
Prosecuting Attorney Renders a Verdict
of Guilty*

Let us resume the history of the Ruef trial. It was certainly resumed soon enough after the shooting of Heney. Hiram Johnson, with no little spectacular effect, had volunteered to resume where Heney had been obliged to quit. And he was in a great hurry, mindful apparently of the maxim regarding the advisability of striking while the iron is hot. Three days after the shooting he was in Judge Lawlor's courtroom pressing the case to trial. Ruef's attorneys were for delay. They wanted a change of venue. How much reason there was in their demand may be inferred from the newspapers of the day. Consider for example this account from the Examiner: "With nearly a hundred armed detectives, mounted police and deputy sheriffs guarding Judge Lawlor's courtroom and its precincts Ruef's essay to delay his trial furnished one of the most intense mornings since the beginning of the graft prosecution. To guard against the outbreak, when Ruef appeared the mounted squad kept the crowd from trickling into Larkin and adjoining streets." The atmosphere of the

courtroom and its environment was, to say the least, portentous. Since the day of the shooting a great change had been wrought in the aspect of affairs, and what that change foreboded Ruef and his attorneys well knew. Ruef himself was no longer in the position that he occupied before the shooting. Before the shooting he was at liberty, on bail. On the day of the shooting he was committed to jail for his own protection, and thereafter he was conducted to and from court by three of the sheriff's deputies, five policemen on foot and ten mounted. The jury which was in charge of the sheriff night and day throughout the trial occasionally met the Ruef procession on the way to court. The supposition was indulged that the jury had but an inkling to all that had occurred. For the jurors were not permitted to read the newspapers. But the vagueness of their knowledge was certainly not a circumstance that advantaged Ruef, inasmuch as it was apparent to them that he was no longer free and that he was under police protection. The jury knew that Heney had been shot, for the door leading from the jury-room into the courtroom was open at the time of the shooting. But the jury probably did not know whether Heney was dead or alive. The jury did know, however, that public sentiment had been wrought up to a high pitch. This they knew because on the night of the mass-meeting, which overflowed into the street, by a singular coincidence they

were conducted by permission of Judge Lawlor to a theatre adjoining the building in which the people were harangued by the rabble-rousers. What the jury thought of the shooting may only be conjectured, but the fact is, as was learned from affidavits made by jurors after the trial, some of them went to Judge Lawlor before the resumption of the trial, told him they had become prejudiced against the defendant by reason of the shooting and could no longer act impartially. Judge Lawlor refused to discharge them. He told them "to keep their feelings to themselves," and that he would properly instruct them later. These affidavits have never been disputed. Judge Lawlor did instruct the jury with reference to the shooting, saying: "No person is to be charged with responsibility for that transaction." This instruction was not satisfying to Henry Ach and Thomas Dozier, attorneys for Ruef. Not for the defendant's sake only, but for their own also, they were eager for a change of venue, since they, too, were under police protection on accounts of threats against their lives for defending their client. But Judge Lawlor quickly disposed of the motion for a change of venue. He denied it. And his decision was applauded by the spectators, many of whom wore the printed badge of the League of Justice, which body was now more energetic than ever. The day on which the trial was resumed the league issued an appeal to the public "to enroll in the

cause of justice" and "not to allow our citizenship to relapse into a state of apparent moral apathy."

In extraordinary emergencies, as, for example, when public ruin threatens, justice may properly be sacrificed to utility, the safety of the people being the supreme law. But this principle was not invoked in the case of Abraham Ruef. Yet justice was wantonly violated. Justice, which ordinarily is "fearful of doing wrong even to the greatest wrong-doers," on Ruef's second trial was fearful of doing nothing but right. Never from the transplanting of Anglo-Saxon justice was there such a trial as this on American soil. In the atmosphere of this trial one feels as though he had come in contact with the granite hardness of human character on some dark and tragic stage devoted to the exploits of barbaric tyranny.

Quick work was made of the fallen boss when the trial was resumed. But despite what had occurred the prosecution did not behave toward the defendant as though there was no longer necessity of insuring a verdict by taking unfair advantage. It will not be necessary to go into details to indicate the manner in which he was dealt with. What the attitude of the judge on the bench was is evident enough from his rulings, but these are to be appreciated only by lawyers or persons who have some acquaintance with juridical procedure. It will suffice to glance at the argument made by Hiram John-

son, for the character of the argument is conclusive of the mood of the court. A glance is no more than is needed to perceive that this lawyer, acting for the district attorney, must have been somewhat in doubt as to the conclusiveness of the proofs of guilt, since he much preferred to discuss other matters. Before taking this glance it may be well by way of preface to observe that a prosecuting attorney, under the law, occupies a semi-judicial position; that it is the sworn duty of a district attorney to see that a defendant has a fair and impartial trial; that it is reversible error under the decisions of the Supreme Court of California for a district attorney to express in his argument his opinion or belief that a defendant is guilty; that remarks tending to prejudice the minds of a jury, personal abuse, vilification, appeals to fear, vanity or passion are also inhibited and deemed justification for reversal. Mr. Johnson, as will be seen, was subject to none of the restraints imposed by law. Early in his argument, discussing a witness named Latham who had left the State to evade judicial process, and who had testified when brought back that Ruef had not induced his departure, Johnson expressed himself in this incoherent fashion: "Who had him decamp? First the United Railroads; secondly Abe Ruef. That is all there is to it. Why did they have him decamp? An innocent man? Jobbed was he?"

Paying witnesses and bribing witnesses. Oh, yes, away with the suborners of perjury! Away with the bribers of witnesses!"

An exception was taken to these remarks. Judge Lawlor instructed the jury that the remarks were not justified by the record. But he administered no rebuke. Indeed he permitted Johnson to proceed thus: "I have the undoubted right under my privilege as an advocate, and so say I: Away with the bribers of jurors and away with the bribers of witnesses. That is my right, and there is no question concerning it." If the court failed to rebuke Johnson it cannot be said that Johnson failed to rebuke the court. For we see that he boldly challenged the ruling on the exception, and flung the objectionable language in the judge's teeth. And the judge was complaisant. The future Governor of California was in a very pugnacious mood on this occasion. He was not to be restrained by any rule or principle; he was intolerant of all shackles; his sentiments were free and unencumbered. Let us consult the transcript on appeal and see with what vehemence he wandered beyond the record, not so much to persuade as to intimidate. To the record we must go else it would be too great a tax on credulity boldly to assert that a prosecuting attorney, in an American court of justice, in the twentieth century, was permitted to practice intimidation on a jury.



RUEF GOING TO AND FROM COURT

In the lower picture the ruins of the City Hall are seen in the distance.

In folio 13357 of Volume IX of the record is to be found the following language: "Why, if you don't convict this man may God in his infinite mercy or worse call upon you the consequences of your act. If when he pleads himself guilty, as he has in this case, you dare to violate your oaths and say he is not guilty may the good God deal with you because by heaven the people will not." The import of all this language is not clear, but the statement that Ruef had pleaded guilty in the case at bar is bald, unvarnished misrepresentation. He never pleaded guilty to bribery. He pleaded guilty in one of the French restaurant cases, and even then, in the same breath, affirmed his innocence. Another vague threat is to be found in folio 13380: "Dare you acquit this man? Dare you? And when we have finished I will ask you again my friends." In folio 13334 we find a telling allusion to the Haas shooting: "Good God all this blood that has been shed!" Again, in folio 13335: "Men struck down doing their duty"; folio 13337: "All this trial, tribulation and all this blood"; folio 13419: "Away with the assassins"; folio 13444: "Good God, all this time, all this money, all this blood that has been shed." And once more a threat, for Johnson has "damnable iteration" in him: "If he is not guilty may the good God deal with you. There is going to be no shifting of responsibility in this determination. Are you in the face of all this to turn him loose and tell him

to go hence? And if you are ready to do it by the gods above we will know the reason why you are ready to do it." This language is more to the point.

Throughout Hiram Johnson's argument the courtroom was filled with members of the League of Justice, wearing their badges, and glowering at the jury. Johnson doubtless felt that he was one of them, and the jury ought not to have had any difficulty in rightly conjecturing to whom he referred when he employed the pronoun in the first person plural. But whether the jury conjectured rightly or not, and whatever the impression made by Johnson's argument, the outcome was highly satisfactory to the patriots. Ruef was found guilty. And Ruef is today in the penitentiary serving a sentence of fourteen years.

That Ruef deserves to be in prison, perhaps there are not many in San Francisco who will venture to dispute. But beyond doubt there are few who will deny that it is most unfortunate that the everlasting law of re-quitall took so tortuous course to visit retribution upon him. Those of us who regard justice as the centre of the whole system of government, who understand that confidence in public justice is the secret of the grand passion of patriotism itself, cannot but take a melancholy view of the process by which punishment was visited on Abraham Ruef. To deplore the

manner of his undoing is not to compassionate him. Rather is one inclined, while complaining of the injustice of which he was the victim, to be incensed at him for having been the cause of it.

A thorough-paced rogue is Ruef ; in the capacity at once of political boss and lawyer to a municipal administration guilty of many immoral practices, perhaps of statutory crimes ; but it may be doubted whether all of his wanton misdeeds constituted a greater crime against the State than the one to which he was made a party by the men who prosecuted him—the crime of making a mockery of justice.

It was bad enough for Abraham Ruef to be convicted in the manner here described, but at least his trial and conviction were in accordance with the forms of law, and thus far he was given the benefit of "due process of law." Eventually it was deemed expedient to deny him even "due process." Ruef's appeal was carried to the highest tribunal in the State. It was his constitutional right to be heard by that tribunal. There is a statutory period in which the court must decide whether it shall grant the application for a hearing. Four of the seven justices of the Supreme Court (all that were necessary) signed the order granting the application. The signatures were appended at different times, but the order was made as of the last day of the statutory period. One of the justices whose signature was attached had departed from the

State. Quickly the prosecution, through the attorney-general, took advantage of a technicality by which Ruef through no fault of his own was deprived of his constitutional right. It was argued that under the decisions of the Supreme Court the justice who was beyond the borders of the State when the order granting the hearing was made had lost jurisdiction, and therefore that the order was void. And so the court held. Thus was justice meted out to Abraham Ruef, or, rather, thus did Attorney-General Webb join with the fallen boss in a glorious triumph over that great virtue which, some philosopher has said, is as essential to the training of a little infant as to the management of a mighty nation.

XII

THE CALHOUN TRIAL

*Followed by the Crushing Defeat of Heney at the
Polls and a Scattering of the Forces
of Righteousness*

Between the day of Ruef's conviction, December 19, 1908, and the extinguishment of his hopes in March, 1911, when he entered the penitentiary, the experience of the regenerators was such as to dishearten them. But for a short time, immediately after Ruef's conviction, they were in a most sanguine mood and full of energy. The time seemed propitious for the trial which Patrick Calhoun had been demanding from month to month. The supposition was that the conviction of Ruef strengthened the probability of the conviction of the railroad official. So Calhoun was accorded a trial, Judge Lawlor presiding. Once again was the State represented by Francis J. Heney, now recovered from his wound and in the pink of condition, attended by two bodyguards, with Detective Burns and four of his men forming a semi-circle at the little prosecutor's back. Thus was revived the primitive custom of the community of Bitter Creek. Both sides were armed to the teeth. So prevalent was the pistol in the court-room that it seemed to be deemed essential to a proper and

effective administration of justice. It was as though Justice carried a pistol in her belt to reinforce the menace of the sword.

The work of impaneling a jury for the Calhoun case was begun January 12, 1909, and thereafter the spectators supped full of sensations day by day. Sixty-three days were spent in getting a jury. During that period 2310 talesmen were examined. It was hard to get a jury for reasons that must be obvious; yet perhaps it may be well to remind the reader that the contest which had been raging for three years had embittered the feelings of almost every citizen of San Francisco. Nothing short of a most sublime celestial spirit could insure a man against ardent sympathy with one side or the other. Hardly anybody could be found who had not formed an opinion as to what should be done either to the higher-ups or to the regenerators.

It was about this time that the muckrakers of magazinedom were deploring the spread of the sentiment that the Graft Prosecution was "hurting business." The muckrakers indicted a whole cityful. To what great length of insight had these dogmatists of the press advanced! After a few days in the company of Detective Burns, or as the guest of Rudolph Spreckels, any New York journalist could tell you just what the matter was with San Francisco. It was a degenerate city, its ears closed to the Voice in the Wilderness; dominated by building beavers; heedful only of the Gospel of Mammonism.

Assuredly the Graft Prosecution had "hurt business." Indeed business had not yet recovered from the effect of the car strike. Besides hurting business the Graft Prosecution was making the whole city very unhappy. Now the happiness of a city is a matter of some consequence. A domestic quarrel involving all the elements of a community is an affair of State, a melancholy one. Were the people to blame that the essay in regeneration had developed into a domestic quarrel? Consider the direction it took from the start by reason of the exhortations of the patriots for public complaisance. This domestic quarrel was a legitimate fruit of circumstance, a natural and normal development which any student of cause and effect might have predicted. And now that it was growing more furious every day, it was also becoming more intolerable. Surely it did not argue a lack of virtue that "a plague o' both your houses" had become the sentiment of many citizens who perceived that to the regenerators their cause was their vanity, which was not to be wounded

"Though sun and moon were in the flat sea sunk."

Such, then, being the sentiment gendered during three years of factional strife, it is no wonder that a jury was hard to get to try Patrick Calhoun. Citizen after citizen confessed in the jury-box to prejudice against the men behind the prosecution. Scores of citizens asserted that they would not believe testimony purchased with im-

munity. Slow and tedious therefore was the task of finding twelve good men and true to administer justice to the pet aversion of the tireless cabal. But the tedium was relieved at brief intervals by colorful and breezy episodes. As for example, when a man in the jury book complained one day that his wife had been questioned at her home by an intrusive detective, who wanted to know what her husband thought of Calhoun. The judge pricked up his ears at this disclosure. Had Calhoun been trying to get advance information? In all likelihood such was the case. But, alas, it turned out that the detective was of Burns's staff. So Heney concluded that the defendant had tempted the detective to turn traitor and occasion the suspicion that the prosecution was tampering with jurors. Quick at all times was Heney to impute misconduct to the other side.

At another time when dullness was making all hands drowsy Earl Rogers, of counsel for defendant, fired the combustible Heney with a mild innuendo. Several jurors had been sworn to try the case, making the moment opportune for some verbal fireworks. In his best strident tones Heney announced that he would no longer tolerate unpleasant insinuations. And then reviving recollection of the spilling of his precious blood on the altar of civic patriotism, he broached a new theory as to the psychology of his almost glorious extinction. He said that he was shot

because he had so tamely submitted to vilification during the Ruef trials. Which seemed to imply that he had ceased to believe that he was the victim of a conspiracy. By way of peroration Heney launched the ultimatum that over a line which he had drawn no man would be permitted to step. Whereupon the cynical A. A. Moore, leading attorney for the defendant, blandly asked, with a glance at the animated arsenals environing Heney, "Are you going to turn loose your gun fighters?" The superheated little patriot ignored the pertinent inquiry.

Heney's irruptions contributed no little gaiety to the proceedings. One day shortly after the trial was begun Judge Lawlor mildly rebuked him, just to indicate, perhaps, that there were bounds to the indulgence of the court. But Heney was not to be awed by the bench. He defied Judge Lawlor to punish him, delivered an oration on his personal status, and again reminded everybody that an attempt had been made to take his life. Hardly had he subsided when his assistant, John O'Gara, provoked another uproar. From long association with Heney O'Gara had caught the infection of the Heney manner. He accused a little boy, who acted as a messenger for defendant's counsel, of sneering at a witness "in full view of the jury." Doubtless he feared that a juvenile sneer might have the effect of a powerful argument. In the midst of the clash between counsel occasioned by the

grave accusation against the messenger boy, the defendant himself rose and addressed the court. "I am on trial here," he said, "and I desire to enter a protest against the conduct of the district attorney as unbecoming and contrary to every rule of law and of practice among English-speaking people."

A mild, impressive protest, but futile. Almost every rule of law and practice was abrogated before Calhoun came to the end of his trial.

The specific charge on which Calhoun was tried was that of promising a bribe to Supervisor Nicholas. The prosecution was to prove that Nicholas received the promise from Gallagher, who received it from Ruef, who received it from an officer of the United Railroads. A very small part of the time consumed in the trial was spent in trying to establish the facts charged. Most of the time was spent in efforts to prejudice the jury against the defendant. And to that end the prosecution was permitted to introduce a large mass of testimony having not the slightest bearing on the issue. The street car strike was the topic of much testimony; also the dynamiting of Gallagher's home and the contest in thievery between the opposing staffs of detectives. As a consequence of the scope vouchsafed Heney by Judge Lawlor, this trial, involving but one question, the question as to whether the promise of a bribe had been made to a supervisor, dragged along from January 12 till June 21.



WILLIAM P. LAWLOR

The "midnight meeting" judge who presided at the
Ruef and Calhoun trials.

At the close of the trial, after the case was in the hands of the jury, Judge Lawlor gave a fresh illustration of his mental attitude in the graft cases. To render the illustration obvious it must be explained that the Ruef jury, a majority of which voted for conviction on the first ballot, was kept out till the last man was converted. This necessitated a session of nearly seventy-two hours. A majority of the Calhoun jury voted for acquittal on the first ballot. It was soon learned that only two jurors were holding out for conviction. Judge Lawlor made their conversion impossible by discharging the jury within twenty-four hours.

As soon as the trial was over there was talk of starting another trial at once. Heney began vociferating as passionately as ever, pouring out his torrent of words, uttering the threats that so seldom fructify in achievement. But things were not so bad as in the days when the terrorists were more firmly seated in the saddle. No threats were made to indict the recalcitrant jurors who had not been impressed by Heney's breezy generalities. No loud proclamations were made by the League of Justice. Mr. Spreckels and his satellites were subdued of manner, the general tone of their utterances being that of sorrow and poignant disappointment.

The work of impaneling a jury for a second trial was soon begun, but it had not progressed far when a halt was called, the reason being that

Heney was in the midst of a political campaign. District Attorney Langdon's term was drawing to a close. An election was to be held in November, 1909. To prolong the life of the reform cabal it was resolved that Heney should become a candidate for district attorney. He was nominated by the Democratic machine, which was manipulated by James D. Phelan and the Bulletin. Heney's opponent was Charles M. Fickert, a young lawyer, a graduate of Stanford University. His record was flawless. He had taken no active part in the dissensions that were tormenting the city. To the public he was unknown. The campaign was an exceptionally spirited one. All the attorneys for the Spreckels-Phelan combine took to the platform to exhort the people to avail themselves of the glorious privilege of retaining the priceless services of Francis J. Heney. Heney himself went about reminding the people of his approximate martyrdom and calumniating his opponent. Judging from the pro-prosecution press at this time the whole country was watching the campaign and taking a feverish interest in the great crisis that was agitating the dizzy heights of uplift. From the most distant parts sounded the clarion tones of renowned reformers commending Heney to the grace of the people. Judge Lindsay of Denver contributed a fine encomium on Heney, which transported the friends of the little prosecutor. From Senator La Follette came this im-

portant message: "Heney's election will help the cause of decency and righteousness everywhere." Colonel Roosevelt refrained from instructing the people in this crisis, but he sent a letter to Heney, which found its way into the press:—"You are one of the Americans of whom I not merely feel proud, but whose deeds, whose high courage, high integrity and entire disinterestedness of devotion to the country make me thrill with enthusiasm."

An insensate populace no longer susceptible to the emotions of the hero of Kettle Hill, utterly ignored the Roosevelt thrill. Out of sixty-two thousand votes Heney was beaten by more than ten thousand. Seemingly Heney had become a weariness to the flesh; likewise the Graft Prosecution. Not so, however, in the judgment of Mayor Taylor's whitewash committee. This committee tells us that Fickert's election was due to the support of bad men and to the circumstance that "some of Mr. Heney's speeches lent color to the claim that he was attempting to try the accused men at the bar of public opinion rather than in the courts of justice." Heney's conduct did not receive the approval of the committee because "he permitted himself to be drawn into personalities from which a calmer judgment would have saved him."

To the regenerators the defeat of Heney was the signal for the ringing down of the curtain on the graft drama. Within a month after his

defeat, before District Attorney Langdon's term of office expired, the requiem of the regenerators was sung by the whitewash committee. It was in the form of a report to Mayor Taylor, who evidently regarded it as of more importance than the report of Police Commissioner Keil with reference to the death of Chief Biggy, for he received it, and it became an official document, and it was printed and distributed at the expense of the taxpayers of the city. The hand that wrote the report is doubtless the hand of Chairman Denman, but the spirit of the report is the spirit of the regenerators. For one of the objects of the report was to perpetuate the names of all the directors of the public service corporations involved in the graft scandal. All were not indicted, but the names of all were printed. As the report may be justly regarded as the judgment of the regenerators on their own conduct, it is of some value. In all the discussion ranging from philippic to puerility there is ever present the assumption that the regenerators could do no wrong. The report breathes intense consciousness of kinship with all the virtues and the noblest ideals. It is a sweeping vindication of the regenerators and a farewell snarl at the higher-ups. The whitewash committee found a pretext for going back in a review of municipal affairs to the days when Phelan was mayor and paying him the tribute of its approval. Coming down to the real business in hand the committee

gives a recital of all the crimes charged against the grafters and the higher-ups—with one exception. This one exception is noteworthy. Nowhere in the report is mention made of the crime charged against the officers of the Southern Pacific Company. Notwithstanding what was said in the report of the Oliver grand jury, so far as the report of the whitewash committee shows Mr. Harriman never did anything to justify the fond hopes that were encouraged at the inception of the work of redemption. The whitewash committee tells of the crimes that were committed to defeat the prosecution, among them being the dynamiting of Gallagher's home, the kidnaping of Older and the shooting of Heney. But there is no mention of the hounding of Biggy, or of the practices that were indulged in to terrorize the courts, or of the short cuts to conviction taken by trial judges. The committee tells of the papers that were stolen by detectives employed by the higher-ups, but nothing is said in the report of the papers stolen by the other side, or of the ignoring of the writ of injunction served upon the prosecution by William Metson, of counsel for the defense, the day that Burns, armed with general warrants, raided the offices of the United Railroads. In the report there is but one invidious reflection on the regenerators and that probably was the result of inadvertence. "The Administration," says the committee, "is still licensing the attrac-

tive and alluring debauchery of the French restaurants." The Administration referred to was that of Dr. Taylor, the good man discovered, sponsored and vouched for by the regenerators.

* * * * *

With the defeat of Francis J. Heney the Graft Prosecution petered out. Patrick Calhoun was not given a second trial. The public was informed by the regenerators that it was deemed advisable to let Mr. Langdon's successor inherit the case. At the same time it was predicted by the dejected and disgruntled patriots that nothing more would be done, as Fickert was not likely to prosecute the men who assisted him into office. It was a pretty safe prediction for them to make. For no man, were he the greatest and most zealous of prosecutors, could have accomplished anything in the circumstances contrived by the prophets. Immediately after his election Fickert said that he would do whatever to him seemed just and proper after he had familiarized himself with the evidence against the higher-ups. He soon perceived that there was nothing for him to do. Before he took possession of the district attorney's office it was swept clean of the records in the graft cases. Not a vestige was to be found of the work done by the corps of special agents employed by the city. A great mass of documents had disappeared. There was no trace of anything that might throw a ray of light on

the business transacted by the district attorney in connection with the graft cases. In addition to being deprived of the records of his office District Attorney Fickert was further embarrassed by the disappearance of James Gallagher, the chief witness for the prosecution. Gallagher had been under the surveillance of the former district attorney's special agents. A detective accompanied him everywhere. This surveillance was discontinued a few weeks before Fickert took possession of the district attorney's office. Before Fickert's election Burns had doubly insured the presence of Gallagher. All Gallagher's loot was in a safe-deposit box which he could not open except in the presence of Burns. Now it is obvious that the regenerators connived at the disappearance of Gallagher. District Attorney Fickert learned that after the defeat of Heney, Gallagher told his friends he was going away. He made no secret of the matter. Fickert also learned that though the second trial of Patrick Calhoun was begun by Heney no subpoena was ever served on Gallagher. Consequently no attachment for him could issue, and as he was in Vancouver, where, as he had told his friends, he intended to remain until the graft cases had been disposed of, it was impossible to bring him back. These being the facts brought to light before Judge Lawlor through the sworn testimony of witnesses there appeared to be nothing for District At-

torney Fickert to do but move to dismiss the graft cases. This motion Judge Lawlor would not grant. He postponed the cases from week to week against the protest of the defendants until August 3, 1910, when he did something more.

With bitter mortification Judge Lawlor realized that the end was approaching. The prospect was a melancholy one for him. The cause with which he was identified, into which he had inextricably wound himself, had not only been defeated but befouled, and he himself had been besmirched. Agitated by impotent regret, sore from great vexations, it was impossible for a man of his temperament, in whom cunning and resentment seem to be congenital deformities, to yield gracefully and amiably to the weight of untoward circumstance. He was resolved to have one more inning. And he had it. Under pretense of explaining why he would not grant the motion to dismiss the trolley cases he read a long typewritten arraignment of the defendants. The result was the last of the many explosions that marked the progress of the Graft Prosecution. Judge Lawlor began his discourse by admitting that Gallagher was an indispensable witness; but it was not clear, he said, that Gallagher left town with the permission of the former district attorney. Notwithstanding the control which Judge Lawlor knew that Burns, Honey and Langdon exercised over Gallagher; notwithstanding the undisputed testi-

mony as to the time and circumstances of Gallagher's disappearance, Judge Lawlor thought it as likely that the defendants had induced Gallagher to run away as that the former prosecutors had done so. Such was the thought that he expressed. And then he went on to impute to Patrick Calhoun the consciousness of certain crimes, such as the dynamiting of Gallagher's home and the suppression of testimony. There was nothing to justify these imputations. Yet Judge Lawlor made them by way of suggesting the possibility of Calhoun's having instigated the flight of the indispensable witness. At the conclusion of the court's wholesale gratuitous assertions Stanley Moore, of counsel for the defendant, asked permission to reply. He was ordered to take his seat. Thereupon the pent-up indignation that had been fermenting for four years was liberated. In denying Moore the right to be heard Judge Lawlor suggested in an ironical tone that the attorney might reply through the columns of the press.

"We assign that," said Moore, "as the last word of your partisanship. We insist on a right which any court with a speck of fairness will freely accord us." Judge Lawlor again ordered him to sit down, and threatened to send him to jail. "Your honor," said Moore, "is doing politics from the bench that you disgrace by your occupancy and as you have been doing before the indictments were filed."

At this point A. A. Moore, father of Stanley Moore, announced that he heartily agreed with his son. "Your honor," he added, "is a bitter partisan and doing dirty politics."

Stanley Moore was still insisting on his right to be heard, and the court ordered him into custody, at the same time adjudging him guilty of contempt. A moment later he also adjudged A. A. Moore guilty of contempt. As the senior Moore was not promptly taken into custody he rose and said, "I do not quite understand your honor. I tried to line myself up here in thorough accord with Stanley Moore, holding your honor as I do in thorough detestation, believing you to be an absolutely contemptible man." At this point A. A. Moore was taken into custody.

The scene was not yet ended. Attorney J. J. Barrett had a few words to say. "I want to register on behalf of Mr. Calhoun," he said, "a most solemn and serious protest. I want to say that he considers the proceedings of today infamous; that his rights have been trampled upon; that the attempt to silence him in view of that address which your honor has upon your desk typewritten, intending, I assume, to hand to the newspapers reporters to have it go broadcast without a denial by Mr. Calhoun—I want to say that it is the most unjust and oppressive ruling that was ever made in an American court of justice. I want to protest in the name of Americans. I want to protest in the name of my pro-

fession. I want to protest in the name of decency. To level that kind of a document at these defendants, and then, under penalty of sending their counsel to jail, deny them an opportunity to reply to it, is taking this case out of the sacred temple of justice into the political arena. Your honor being a candidate for office at this time, and having postponed these cases till the eve of the primaries should not be guilty of any such oppression. In the name of Mr. Calhoun I want to register my protest, and I only regret that I have not more severe language in which to express his indignation."

Barrett was adjudged guilty of contempt. Then Calhoun addressed the court thus:

"May it please your honor, I have been educated to have respect for the courts. I have sat in your court under circumstances that would have tried the patience of any American. I have sought, sir, to give you that respect to which your office entitles you. But I cannot sit quiet and listen to the vile insinuations which you yourself have stated there was no evidence before you to justify. There have been periods, sir, when the greatest honor ~~that could come to a man was to go to jail~~; and as an American citizen I say to you that if you should send ^{me} ~~me~~ for contempt it will be heralded all over the country as an honor. You have seen fit to send three of the most distinguished counsel of this State to jail. Why? Because they have sought to express in

men
were
to jail
have
wh
infam
judge
in line
have de
and rec
the evide
and disc

terms of respect, and yet in terms of strength, their protest against injustice."

"Mr. Calhoun—" interrupted the court.

"There is a time—pardon me, your honor—but there is a time when every man has a right to be heard."

Judge Lawlor a second time interrupted, but Calhoun concluded what he had risen to say: "Before I take my seat I desire to say that any insinuation that implies that I was a party to any obstructions of justice, or that I was a party to the absence of any witness or that I have sought to control the district attorney's office, is untrue. There is no such evidence before this court. You yourself know it."

Calhoun was not adjudged guilty of contempt.

In the course of time the attorneys for the higher-ups applied to the District Court of Appeal for a writ of mandate requiring Judge Lawlor to dismiss the cases that he refused to try. The matter was argued by Garret W. McEnerney, who pointed out that it was the established constitutional and statutory rule of law in California that every man accused of crime must be brought to trial, unless good cause for delay be shown, within sixty days after the filing of the indictment. Of neither the law nor the facts was there any dispute. It was admitted that the continuance of a case for more than sixty days, notwithstanding the protest of the defendant, entitled him to a dismissal unless it could be

pressed up and pronounced
new from the bench
insinuation
they

shown that there was good cause for postponement. The District Court of Appeal issued the writ of mandate on August 16, 1911. The opinion of the court is of some interest inasmuch as it bears out what has been said in this chapter with reference to the flight of Gallagher. The only question before the court was whether the State was responsible for the absence of the indispensable witness. "It was shown," said the court, "that Gallagher had left the State if not openly, at least without concealment of his intention. It was shown that he had openly and freely visited ticket offices inquiring about railroad and steamship transportation. He declared to his friends that it was his intention to make an extended tour of Europe; that he was not under the process of the court; that the time in which he could be indicted for complicity in the crime charged against petitioner had expired; and that he was 'not coming back until the whole thing blows over.'" All this, it is important to note, occurred when Langdon was district attorney and when Heney was his assistant. It is also important to note that Judge Lawlor in his return to the application for a writ of mandate admitted the facts to be as recited in the foregoing language. This is important because Judge Lawlor, as we have seen, thought it possible on one occasion that the defendants might have prompted Gallagher to run away. Having this thought Judge Lawlor continued the Ford

case fifty-six times and kept Ford's motion to dismiss under advisement four hundred days. He said that the facts of the case "warranted the inference" that Gallagher would return. The District Court of Appeal said no such inference was warranted; furthermore, that so clear was the right of the defendant that "to deny it would be a deliberate defiance of the plain mandate of the law and a manifest misuse of judicial power." So much for Judge Lawlor.

There is little more to be said. But now that the smoke of battle has lifted, let us, dear reader, before parting, take a survey of the battlefield. The higher-ups with one exception are at liberty. The one exception is A. K. Detweiler of the Home Telephone Company. When indicted he was not in sight, and Detective Burns never tried very hard to find him. After Gallagher's disappearance Detweiler surrendered himself to the authorities, and affected an eagerness to be tried. But nothing has yet been done in his case. It will probably be dismissed.

In all there were 383 indictments in the Graft cases. The only persons found guilty were Abraham Ruef, Eugene Schmitz, Supervisor Michael Coffey and Louis Glass, vice-president of the Pacific States Telephone and Telegraph Company. Glass was convicted when public sentiment was at white heat. He was given the regulation Heney style of trial; and for what reformers are pleased to describe as "technicalities"

the verdict was set aside. These "technicalities" are plain, unvarnished transgressions of constitutional rights. Coffey was tried in violation of his immunity contract for not giving the right kind of testimony. An appeal was taken in his case, and is still pending. The principal point on which he relies is that he was convicted on the testimony of an accomplice.

So, as we have seen, the attorneys for the prosecution met with a great deal of discouragement in the trial courts, of which they have never had occasion to make complaint. To account for their defeats they have charged the appellate courts with having shielded the higher-ups, whereas they never succeeded in convicting more than one of the representatives of the public service corporations. Tirey L. Ford was acquitted, and Patrick Calhoun almost. Theodore Halsey, of the Pacific States Telephone and Telegraph Company, was tried twice, defended by Bert Schlesinger and acquitted both times. In addition to these cases there were the cases of two men charged with jury-bribing, defended by Bert Schlesinger, and acquitted. There was also the case of Luther Brown, charged with the kidnaping of Fremont Older. Brown was defended by Bert Schlesinger and acquitted. Obviously if justice was "broken down" in San Francisco, as the regenerators have frequently asserted, the catastrophe occurred in the jury-box, over which the prosecution exercised a

supervision never surpassed in the history of the criminal courts of this country. To the recalcitrance of jurors, if not to the inherent weakness of the evidence, must be attributed the failure of Heney and his associates to procure the conviction of the higher-ups. But throughout the length and breadth of the land, and even in California itself, the impression prevails that the great scheme of redemption was rendered frustrate by the appellate courts, owing to a strong bond of sympathy between the judges and the rich men under indictment. Perseverance in slander seldom goes unrewarded. California has been frequently pointed to of late as a State that needs the application of the principle of the recall to the judiciary; and the failure of the Graft Prosecution is the reason. The failure of the Graft Prosecution is the reason that the Legislature of California, at the suggestion of Governor Johnson, decided to submit to the people a proposal to put the recall in the Constitution. Men have a curious facility in believing what they want to believe. They can even, by frequent repetition, come to believe false assertions about their own experience. Probably Governor Johnson really believes that the judges of the appellate courts thwarted the regenerators, and that consequently those judges should be recalled. It remains to be seen what measure of success will attend the efforts of the Governor and his associates. They are still

devoting their talents to the work of regeneration. Their field of operations now extends over the whole State and even into the domain of national politics. Rudolph Spreckels, impervious to discouragement, has consecrated his genius to the task of redeeming a nation. Francis J. Heney, now a lawyer without a client, cherishes the hope of becoming a Senator of the United States, and keeps himself before the public in the role of platform muckraker. James D. Phelan appears to be attending strictly to business. Once the star performer on all public occasions, months have passed since this foremost citizen enjoyed the opportunity of delivering so much as an address of welcome. Whatever may be the sentiment of the people of the State, it is certain that the affections of the people of the metropolis have been alienated from the zealous exemplars of the unwisdom of being righteous overmuch. Long ago the populace ceased to squander its reverence on patriots, who, while professedly eager to purge the city of corruption, made a mockery and a scandal of the most sacred of the institutions of government.

0 29 249

UNIVERSITY OF VICTORIA

Library

VICTORIA, B.C.

